



HARM REDUCTION AND OVERDOSE PREVENTION 50-State Survey

Legality of Drug Checking Equipment in the United States


August 2022 Update

Fentanyl and fentanyl analogs are now present in the illicit drug supply in many areas of the country, driving a more than 700% increase in non-methadone synthetic opioid-related overdose deaths from 2015 to 2021.¹ Fentanyl adulteration in the illicit drug market was initially largely confined to states east of the Mississippi River, but fentanyl and fentanyl analogs are now found in illicit drugs throughout the United States.² Because fentanyl is more potent than many other opioids and its presence makes it difficult for people who use illicit opioids to properly titrate their dose, fentanyl adulteration creates a heightened risk for overdose among those individuals.³

Fentanyl has also been associated with increased overdose rates among people who use stimulants, such as cocaine and methamphetamine.⁴ Because no safe supply of most illicitly used drugs is available, helping people who use drugs determine what is in those drugs can be an impactful harm reduction intervention.⁵ The easiest and most inexpensive way to accomplish this is often through use of fentanyl test strips (FTS). FTS are small, disposable strips that identify the presence of fentanyl in a sample of drugs.

Many people who inject drugs (PWID) change their behavior based on the results provided by FTS. A survey of PWID in North Carolina, for example, found that more than four in five PWID who received FTS used the strips to test their drugs before consumption, and people who obtained a positive result were five times more likely to report changes in drug use behavior than those who obtained a negative result.⁶ A survey of PWID in Rhode Island found that a positive FTS result was significantly associated with reporting a positive change in overdose risk behavior between baseline and follow-up, with approximately forty-five percent of PWID reporting using a smaller amount of the drug and approximately forty-two percent reporting using it more slowly.^{7,8} Based in part on these promising initial results, governmental and non-governmental organizations in many states now provide FTS as part of a broader harm reduction strategy, and the Centers for Disease Control and Prevention (CDC) and the Substance Abuse and Mental Health Services Administration (SAMHSA) permit federal funding to be used to purchase them.⁹

While it is of particular importance because of its strength and ubiquity, fentanyl is not the only adulterant of concern. Drug checking at dance festivals, for example, has long been used to determine whether consumables that are represented as one drug contain another substance using reagent tests.¹⁰ Most of these tests have the same limitation as FTS, however: they only identify the presence of an adulterant, not its concentration. To provide more detailed information, some organizations have begun to utilize more advanced equipment that provides a detailed analysis of the substances present in a drug sample.¹¹ This equipment has the advantage of providing much more extensive information than FTS or reagent tests but is much more expensive to acquire and maintain, and often requires a trained operator.¹²



State laws can limit the uptake of drug checking initiatives. Because most state paraphernalia laws are based on a model law created in the late 1970s by the Drug Enforcement Administration, they typically classify nearly every object used in conjunction with illicit drugs—including those used for “testing” or “analyzing” those drugs—as drug paraphernalia.¹³ They also generally prohibit the possession or distribution of such paraphernalia. While in our experience these laws are rarely used to arrest or prosecute people solely for possession or distribution of drug checking equipment, they can cause confusion and may deter uptake of these promising interventions.¹⁴

To determine the potential barriers posed to broader uptake of drug checking, we systematically surveyed the relevant legal landscape in the fifty United States, the District of Columbia, and Puerto Rico (hereafter referred to as “states”) in both August 2021 and August 2022. The table in this document displays the characteristics of the law in each state as of August 31, 2022, and the figures show the changes in state laws regarding drug checking equipment between 2020 and 2022. First, the table notes whether the possession of drug checking equipment is legal in each state. Second, we note whether the free distribution of drug checking equipment is clearly legal. If the state has modified its law to increase access to drug checking equipment, we then note when those changes occurred. The next column notes whether there are exceptions to the general rules regarding drug checking equipment for syringe services programs (SSP). Finally, we note whether drug checking equipment is covered by the state overdose Good Samaritan law.¹⁵

We found that it is clearly legal to possess all drug checking equipment in twenty-three states. In seven additional states the possession of fentanyl testing equipment is clearly legal, and in one state equipment for testing all synthetic opioids is permitted. In the remaining twenty-one states possession of drug checking equipment is arguably a crime, typically because the law both defines paraphernalia as including testing equipment and criminalizes the possession of such paraphernalia. In nineteen states it is clearly legal to provide all drug checking equipment to adults for free.¹⁶ Seven additional states permit the distribution of devices for testing for the presence of fentanyl but not other drug checking equipment; as with possession, one state permits the distribution of equipment for the checking of all synthetic opioids.

The law regarding the distribution of drug checking equipment by SSPs is sometimes unclear, such as where the law excludes “injecting supplies” obtained from an SSP from the state paraphernalia law but does not define the term. Some states provide additional restrictions on the legality of devices obtained from SSPs; Kentucky, for example, exempts those devices from the state paraphernalia law only while they are located at the SSP.¹⁷ However, we find that, in approximately one dozen states, SSPs are clearly permitted to distribute drug checking equipment, even if such distribution is not otherwise permitted. Finally, we find that the overdose Good Samaritan laws in thirty-eight states provide protection from criminal action related to drug checking equipment.

States have been rapidly modifying their laws to increase access to drug checking equipment. Between August 1, 2021, and August 31, 2022, laws that permit drug checking equipment to be possessed, distributed, or both went into effect in ten states (Alabama, Arizona, Connecticut, Louisiana, Maine, New Jersey, New Mexico, Tennessee, West Virginia, and Wisconsin). An additional two states (California and Georgia) passed laws in that time period that will go into effect in 2023. Additionally, Louisiana and Texas added drug checking equipment to their overdose Good Samaritan laws. These changes are demonstrated in the figures.

As with previously passed drug checking laws, there is some variation in the materials to which these new laws apply. Most comprehensive are those in Connecticut, Maine, and New Mexico, which apply to equipment for testing or analyzing all drugs. The laws in Georgia and Tennessee are limited to devices used to detect synthetic opioids, while the California law covers devices for detecting ketamine, gamma hydroxybutyric acid, and any analog of fentanyl. Laws in Alabama, Arizona, Louisiana, and Wisconsin apply only to objects used to test for fentanyl or fentanyl analogues, while those in New Jersey and West Virginia apply only to fentanyl test strips. In our view these exemptions should be as broad as possible to enable public health and harm reduction programs to respond rapidly to changes in adulterants of concern as well as provide information on non-opioid adulterants, such as benzodiazepines.

We emphasize that the fact that a state has not clearly legalized the possession or distribution of drug checking equipment does not necessarily mean that those activities are illegal. Indeed, many states in which drug checking equipment is not clearly legal distribute it via health departments and other entities. However, in those states it may be helpful to modify or repeal relevant laws to clarify that drug checking equipment is not criminalized.¹⁸

Legal Status of Drug Checking Equipment (DCE) as of August 31, 2022

State	Possession of DCE permitted ¹⁹	Free distribution of DCE permitted	Effective date of law change	Exceptions for Syringe Services Programs	Good Samaritan law covers DCE
Alabama	Fentanyl: Yes Others: No ²⁰	Fentanyl: Yes Others: No ²¹	June 1, 2022	SSP not authorized	Yes ²²
Alaska	Yes ²³	Yes ²⁴		No, but possession and distribution are not prohibited	N/A
Arizona	Fentanyl: Yes Others: No ²⁵	Fentanyl: Yes Others: No ²⁶	September 29, 2021	Likely ²⁷	Yes ²⁸
Arkansas	No ²⁹	Yes (except to minors) ³⁰		No, but free distribution to adults is not prohibited	No ³¹
California	Yes ³²	No ³³	Note: Fentanyl testing equipment legal effective January 1, 2023. ³⁴	Yes ³⁵	Yes ³⁶
Colorado	Yes ³⁷	Yes ³⁸	May 23, 2019	No, but possession and distribution are not prohibited	Yes ³⁹
Connecticut	Yes ⁴⁰	Yes ⁴¹	July 1, 2022	No ⁴²	Yes ⁴³
Delaware	Fentanyl strips: Yes Others: No ⁴⁴	Fentanyl strips: Yes Others: No ⁴⁵	June 3, 2021	Yes ⁴⁶	Yes ⁴⁷
Florida	No ⁴⁸	No ⁴⁹		No ⁵⁰	Yes ⁵¹
Georgia	No ⁵²	No ⁵³	Note: Synthetic opioid testing equipment legal effective July 1, 2023. ⁵⁴	Likely, for SSP agents and employees ⁵⁵	Yes ⁵⁶

State	Possession of DCE permitted ¹⁹	Free distribution of DCE permitted	Effective date of law change	Exceptions for Syringe Services Programs	Good Samaritan law covers DCE
Hawaii	No ⁵⁷	No ⁵⁸		Possibly ⁵⁹	Yes ⁶⁰
Idaho	No ⁶¹	No ⁶²		Possibly ⁶³	Yes ⁶⁴
Illinois	No ⁶⁵	Yes ⁶⁶		Yes ⁶⁷	Yes ⁶⁸
Indiana	No ⁶⁹	No ⁷⁰		Likely, for SSP volunteers and staff ⁷¹	Yes ⁷²
Iowa	No ⁷³	No ⁷⁴		SSP not authorized	Yes ⁷⁵
Kansas	No ⁷⁶	No ⁷⁷		SSP not authorized	No ⁷⁸
Kentucky	No ⁷⁹	No ⁸⁰		Yes, but only while at the SSP site ⁸¹	Yes ⁸²
Louisiana	Fentanyl: Yes Others: No ⁸³	Fentanyl: Yes Others: No ⁸⁴	August 1, 2022	Yes ⁸⁵	Yes ⁸⁶
Maine	Yes ⁸⁷	Yes ⁸⁸	October 18, 2021	No, but possession and distribution are not prohibited ⁸⁹	Yes ⁹⁰
Maryland	Yes ⁹¹	Yes ⁹²	June 1, 2018	Yes ⁹³	Yes ⁹⁴
Massachusetts	Yes ⁹⁵	Yes ⁹⁶		No, but possession and free distribution are not prohibited ⁹⁷	N/A ⁹⁸
Michigan	Yes ⁹⁹	Yes ¹⁰⁰		No, but possession and free distribution are not prohibited ¹⁰¹	N/A ¹⁰²
Minnesota	Fentanyl: Yes Others: No ¹⁰³	Fentanyl: Yes Others: No ¹⁰⁴	July 1, 2021	No, but possession and distribution of fentanyl testing equipment is not prohibited ¹⁰⁵	Yes ¹⁰⁶
Mississippi	No ¹⁰⁷	No ¹⁰⁸		SSP not authorized	Yes ¹⁰⁹
Missouri	No ¹¹⁰	No ¹¹¹		SSP not authorized	Yes ¹¹²
Montana	No ¹¹³	No ¹¹⁴		Yes, for volunteers and employees ¹¹⁵	Yes ¹¹⁶
Nebraska	Yes ¹¹⁷	Yes ¹¹⁸		SSP not authorized	Yes ¹¹⁹

State	Possession of DCE permitted ¹⁹	Free distribution of DCE permitted	Effective date of law change	Exceptions for Syringe Services Programs	Good Samaritan law covers DCE
Nevada	Yes ¹²⁰	Yes ¹²¹	May 28, 2021	No, but possession and free distribution are not prohibited ¹²²	Yes ¹²³
New Hampshire	Yes ¹²⁴	No ¹²⁵		Likely ¹²⁶	No ¹²⁷
New Jersey	Fentanyl test strips: Yes Others: No ¹²⁸	Fentanyl test strips: Yes Others: No ¹²⁹	January 18, 2022	No ¹³⁰	Yes ¹³¹
New Mexico	Yes ¹³²	No ¹³³	May 18, 2022	Yes ¹³⁴	Yes ¹³⁵
New York	Yes ¹³⁶	Yes ¹³⁷		No, but possession and free distribution are not prohibited	Yes ¹³⁸
North Carolina	Yes, for personal use ¹³⁹	No ¹⁴⁰	July 22, 2019	Yes ¹⁴¹	Yes ¹⁴²
North Dakota	No ¹⁴³	No ¹⁴⁴		Yes ¹⁴⁵	Yes ¹⁴⁶
Ohio	No ¹⁴⁷	Yes ¹⁴⁸		Yes, for staff and volunteers, and participants within 1,000 feet of SSP ¹⁴⁹	No ¹⁵⁰
Oklahoma	No ¹⁵¹	No ¹⁵²		Yes, for volunteers and employees ¹⁵³	Yes ¹⁵⁴
Oregon	Yes ¹⁵⁵	No (civil violation) ¹⁵⁶		Yes ¹⁵⁷	Yes ¹⁵⁸
Pennsylvania	No ¹⁵⁹	No ¹⁶⁰		SSP not authorized ¹⁶¹	Yes ¹⁶²
Puerto Rico	No ¹⁶³	No ¹⁶⁴		Yes ¹⁶⁵	No ¹⁶⁶
Rhode Island	Yes ¹⁶⁷	Yes ¹⁶⁸	July 2, 2018	No, but possession and distribution are not prohibited ¹⁶⁹	N/A ¹⁷⁰
South Carolina	Yes ¹⁷¹	Yes ¹⁷²		No, but possession and distribution are not prohibited ¹⁷³	Yes ¹⁷⁴
South Dakota	No ¹⁷⁵	No ¹⁷⁶		SSP not authorized	No ¹⁷⁷

State	Possession of DCE permitted ¹⁹	Free distribution of DCE permitted	Effective date of law change	Exceptions for Syringe Services Programs	Good Samaritan law covers DCE
Tennessee	Synthetic opioid: Yes Others: No ¹⁷⁸	Synthetic opioid: Yes Others: No ¹⁷⁹	March 31, 2022 (sunsets July 1, 2025)	Yes, for staff and volunteers, and participants engaging in or traveling to or from the SSP ¹⁸⁰	Yes ¹⁸¹
Texas	No ¹⁸²	No ¹⁸³	September 1, 2021 (Good Samaritan law)	SSP not authorized	Yes ¹⁸⁴
Utah	No ¹⁸⁵	No ¹⁸⁶		No ¹⁸⁷	Yes ¹⁸⁸
Vermont	Yes ¹⁸⁹	Yes ¹⁹⁰		No, but possession and free distribution are not prohibited ¹⁹¹	N/A ¹⁹²
Virginia	Yes ¹⁹³	Yes ¹⁹⁴	July 1, 2019	Yes ¹⁹⁵	Yes ¹⁹⁶
Washington D.C.	Yes, for personal use ¹⁹⁷	No ¹⁹⁸	April 11, 2019	Yes ¹⁹⁹	Yes ²⁰⁰
Washington	Yes ²⁰¹	No (civil infraction) ²⁰²	May 13, 2021	Yes ²⁰³	No ²⁰⁴
West Virginia	Yes ²⁰⁵	Yes ²⁰⁶	June 10, 2022	No, but possession and free distribution are not prohibited	No ²⁰⁷
Wisconsin	Fentanyl: Yes Others: No ²⁰⁸	Fentanyl: Yes Others: No ²⁰⁹	March 18, 2022	SSP not authorized	Yes ²¹⁰
Wyoming	Yes ²¹¹	Yes ²¹²		SSP not authorized	N/A ²¹³

Figure 1: States with laws permitting possession of DCE, by year

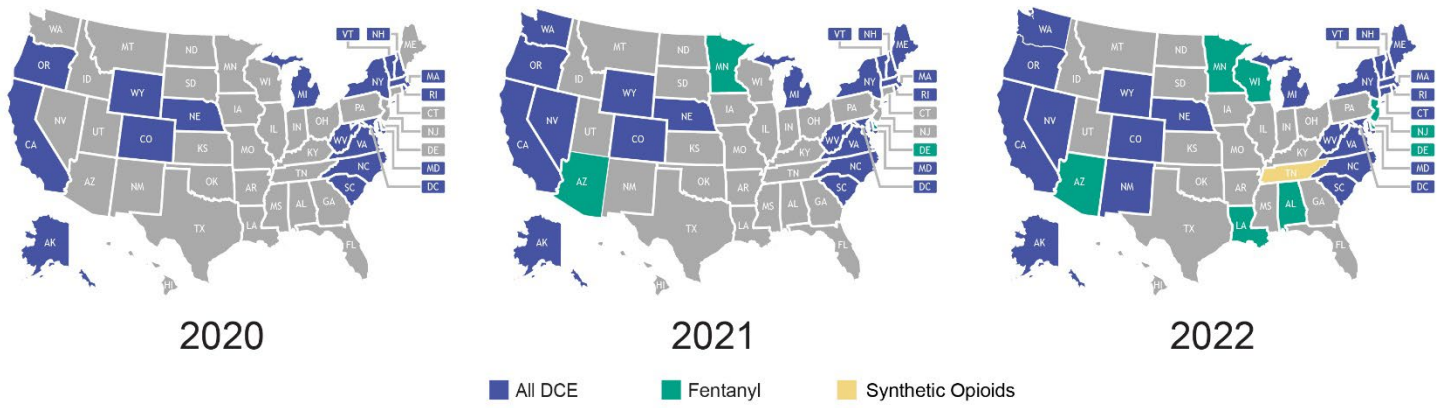
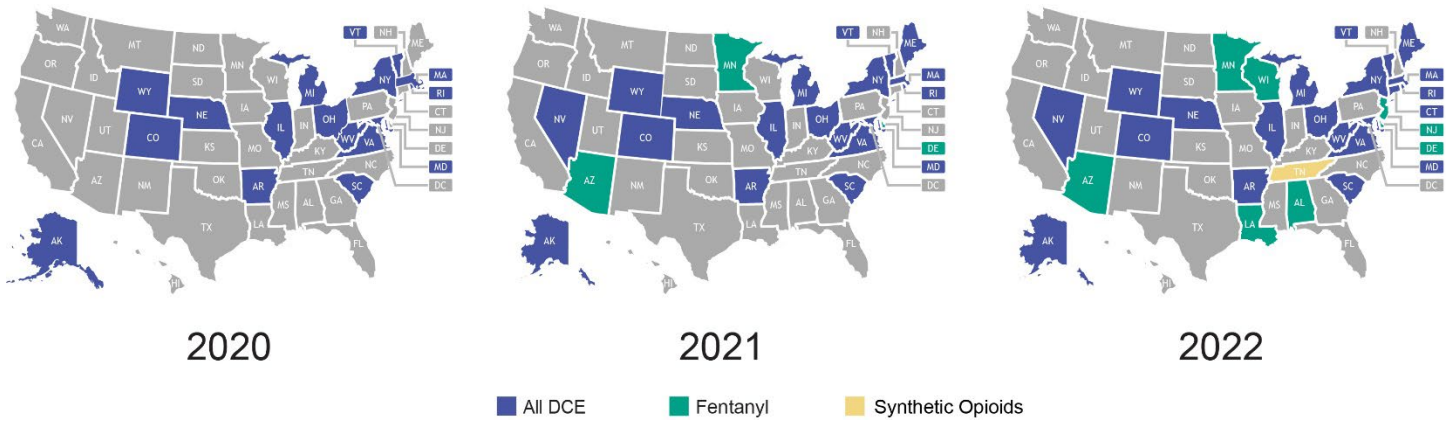


Figure 2: States with laws permitting free distribution of DCE, by year



Appendix: Relevant legal changes between August 1, 2021 and August 31, 2022

State: Alabama

Bill: [2022 Ala. Laws Act 2022-154 \(S.B. 168\)](#)

Change: “[A] person may possess, deliver, or sell testing equipment designed to detect the presence of fentanyl or any synthetic controlled substance fentanyl analogue.”

Date: June 1, 2022

Applies to: Fentanyl and fentanyl analogs

State: Arizona

Bill: [2021 Ariz. Legis. Serv. Ch. 372 \(S.B. 1486\)](#)

Change: Drug paraphernalia definition was modified to exclude “[t]esting equipment used, intended for use or designed for use in identifying or analyzing the strength, effectiveness or purity of drugs, *other than narcotic drug testing products that are used to determine whether a controlled substance contains fentanyl or a fentanyl analog.*”

Date: September 29, 2021

Applies to: Fentanyl and fentanyl analogs

State: California

Bill: [2022 Cal. Legis. Serv. Ch. 201 \(A.B. 1598\)](#)

Change: Drug paraphernalia definition modified to exclude “any testing equipment designed, marketed, intended to be used, or used, to test a substance for the presence of fentanyl, ketamine, gamma hydroxybutyric acid, or any analog of fentanyl.”

Date: January 1, 2023

Applies to: Fentanyl, ketamine, gamma hydroxybutyric acid, and fentanyl analogs

State: Connecticut

Bill: [2022 Conn. Legis. Serv. P.A. 22-108 \(H.B. 5430\)](#)

Change: Drug paraphernalia law modified to note that the term “does not include a product used by a manufacturer licensed pursuant to this chapter for the activities permitted under the license or by an individual to test any substance prior to injection, inhalation or ingestion of the substance to prevent accidental overdose by injection, inhalation or ingestion of the substance, provided the licensed manufacturer or individual is not using the product to engage in the unlicensed manufacturing or distribution of controlled substances.”

Date: July 1, 2022

Applies to: Any substance

State: Georgia

Bill: [2022 Georgia Laws Act 879 \(H.B. 1175\)](#)

Change: “[A]ny testing equipment used to determine whether a controlled substance has been adulterated and contains a synthetic opioid shall not be considered a drug related object as defined by Article 2 of Chapter 13 of Title 16.”

Date: July 1, 2023

Applies to: Synthetic opioids

State: Louisiana

Bill: [2022 La. Sess. Law Serv. Act 137 \(H.B. 212\)](#)

Change: “Notwithstanding any provision of law to the contrary, the term ‘drug paraphernalia’ shall not include rapid fentanyl test strips (FTS) or any testing equipment or devices solely used, intended for use, or designed to determine whether a substance contains fentanyl or its analogues.”

Date: August 1, 2022

Applies to: Fentanyl and fentanyl analogs

State: Maine

Bill: [2021 Me. Legis. Serv. Ch. 434 \(H.P. 732\) \(L.D. 994\)](#)

Change: References to testing and analyzing as well as specific reference to testing equipment were removed from the definition of drug paraphernalia.

Date: October 18, 2021

Applies to: Not specific to any drug

State: New Jersey

Bill: [2021 N.J. Sess. Law Serv. Ch. 403 \(S.B. 3493\)](#)

Change: “[f]entanyl test strips” were excluded from the definition of drug paraphernalia.

Date: January 18, 2022

Applies to: Fentanyl test strips only

State: New Mexico

Bill: [2022 New Mexico Laws Ch. 4 \(H.B. 52\)](#)

Change: “[S]upplies or devices used for the testing of controlled substances or controlled substance analogs for dangerous adulterants” were exempted from the law that criminalizes paraphernalia possession and use. Note that this change did not modify the law that applies to paraphernalia distribution.

Date: May 18, 2022

Applies to: Supplies or devices used for the testing of controlled substances or controlled substance analogs for dangerous adulterants

State: Tennessee

Bill: [2022 Tennessee Laws Pub. Ch. 764 \(S.B. 2427\)](#)

Change: “[N]arcotic testing equipment used to determine whether a controlled substance contains a synthetic opioid” was removed from the definition of drug paraphernalia.

Date: March 31, 2022 (sunsets July 1, 2025)

Applies to: Narcotic testing equipment used to determine whether a controlled substance contains a synthetic opioid

State: West Virginia

Bill: [2022 West Virginia Laws Ch. 60 \(H.B. 4373\)](#)

Change: “[F]entanyl test strips shall not be considered drug paraphernalia...”

Date: June 10, 2022

Applies to: Fentanyl test strips

Note: West Virginia does not criminalize the possession or free delivery of paraphernalia; this provision applies only to the sale of paraphernalia.

State: Wisconsin

Bill: [2021-2022 Wisc. Legis. Serv. Act 180 \(2021 S.B. 600\)](#)

Change: “Any materials used or intended for use in testing for the presence of fentanyl or a fentanyl analog in a substance” were excluded from the definition of drug paraphernalia.

Date: March 18, 2022

Applies to: Fentanyl testing equipment

This document was created by the Harm Reduction Legal Project at the Network for Public Health Law with support, in part, from the Centers for Disease Control and Prevention (CDC) under contract GS00Q140ADU119. All opinions and conclusions are solely those of the authors and do not necessarily represent the position of and should not be attributed to the CDC or any other organization. The information provided in this document does not constitute legal advice or legal representation. The Harm reduction Legal Project provides free technical legal and policy assistance to individuals, governmental, and non-governmental organizations, and can be contacted at harmreduction@networkforphl.org. For legal advice, please consult an attorney in your state.

References

- ¹ CDC reported 9,610 such deaths in the twelve months ending December 2015, and 71,074 in the twelve months ending December 2021. Farida B. Ahmad et al., *Provisional Drug Overdose Death Counts*, Centers for Disease Control and Prevention (2021), <https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm> (last visited Nov. 12, 2022).
- ² Chelsea L. Shover et al., *Steep increases in fentanyl-related mortality west of the Mississippi River: Recent evidence from county and state surveillance*, DRUG AND ALCOHOL DEPENDENCE (2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7521591/>.
- ³ Bryce Pardo et al., *The Future of Fentanyl and Other Synthetic Opioids*, RAND Corporation, (2019), https://www.rand.org/pubs/research_reports/RR3117.html/.
- ⁴ Brooke Hoots et al., *The rise in non-fatal and fatal overdoses involving stimulants with and without opioids in the United States*, 115 ADDICTION 946-958 (2020), <https://pubmed.ncbi.nlm.nih.gov/31912625/>; C. M. Jones, et al., *The Evolving Overdose Epidemic: Synthetic Opioids and Rising Stimulant-Related Harms*, 42 EPIDEMIOL REV (2020).
- ⁵ Susan G. Sherman, et al., *Acceptability of implementing community-based drug checking services for people who use drugs in three United States cities: Baltimore, Boston and Providence*, 68 INT'L. J. DRUG POLICY 46-53 (2019).
- ⁶ Nicholas C. Peiper, et al., *Fentanyl test strips as an opioid overdose prevention strategy: findings from a syringe services program in the Southeastern United States*, 63 INT'L. J. DRUG POLICY 122–128 (2019).
- ⁷ Maxwell S. Krieger, et al., *Use of rapid fentanyl test strips among young adults who use drugs*, 61 INT'L. J. DRUG POLICY 52–58 (2018).
- ⁸ Jacqueline E. Goldman, et al., *Perspectives on rapid fentanyl test strips as a harm reduction practice among young adults who use drugs: a qualitative study*, 16 HARM REDUCTION J. 3 (2019).
- ⁹ Centers for Disease Control and Prevention & Substance Abuse and Mental Health Services Administration, *Federal Grantees May Now Use Funds to Purchase Fentanyl Test Strips* (2021), <https://www.cdc.gov/media/releases/2021/p0407-Fentanyl-Test-Strips.html>; see also Regina LaBelle, et al., *Unlocking Federal Funding for Fentanyl Test Strips Will Save Lives*, Stat News (May 4, 2021), <https://www.statnews.com/2021/05/04/fentanyl-test-strips-unlocking-federal-funding-save-lives/> (“Making it easier to access fentanyl test strips is another essential step to save lives, foster engagement, and build trust with underserved and at-risk populations.”).
- ¹⁰ J. J. Palamar, et al., *Drug checking at dance festivals: A review with recommendations to increase generalizability of findings*, 29 EXP CLIN PSYCHOPHARMACOL (2021).
- ¹¹ Traci C. Green, et al., *An assessment of the limits of detection, sensitivity and specificity of three devices for public health-based drug checking of fentanyl in street-acquired samples*, 77 INT'L. J. DRUG POLICY 102661 (2020).
- ¹² Wallace B. Hills R, Rothwell J, et al. Implementing an integrated multi-technology platform for drug checking: Social, scientific, and technological considerations. *Drug Test Anal.* 2021;13(4):734-746; Traci C. Green, et al., *An assessment of the limits of detection, sensitivity and specificity of three devices for public health-based drug checking of fentanyl in street-acquired samples*, 77 INT'L. J. DRUG POLICY 102661 (2020).
- ¹³ Michael D. Guinan, *Constitutionality of Anti-Drug Paraphernalia Laws-The Smoke Clears*, 58 NOTRE DAME L.R. 833 (1983).
- ¹⁴ Corey S. Davis, et al., *Legality of drug checking equipment in the United States: A systematic legal analysis*, 234 DRUG ALCOHOL DEPEND 109425 (2022)
- ¹⁵ The protection provided by overdose Good Samaritan laws varies greatly by state on variables such as which parties are covered, at which point protection applies, as well as restrictions on generally provided protections. That information is not the focus of the document; please see <https://www.networkforphl.org/resources/legal-interventions-to-reduce-overdose-mortality-overdose-good-samaritan-laws/> for extensive information about each state’s overdose Good Samaritan law.
- ¹⁶ Because the audience for this document is largely governmental and non-governmental organizations that provide fentanyl test strips and other drug checking equipment at no cost, we focus on the free distribution of those supplies. Some jurisdictions may have penalties for the sale of paraphernalia that are not captured here.
- ¹⁷ Per Kentucky law, “Items exchanged at the program shall not be deemed drug paraphernalia under this section [includes possessing and giving away drug paraphernalia] while located at the program [a substance abuse treatment outreach program which allows participants to exchange hypodermic needles and syringes].” Ky. Rev. Stat. Ann. § 218A.500(5)(c).
- ¹⁸ Corey S. Davis, et al., *Paraphernalia Laws, Criminalizing Possession and Distribution of Items Used to Consume Illicit Drugs, and Injection-Related Harm*, 109, no. 11 AM. J. PUB. HEALTH, 1564-1567 (2019).

-
- ¹⁹ Possession statutes generally come in two forms, criminalizing the “possession” or the “use or possession with intent to use.” This column will indicate a “no” for states in which either possession or use or possession with intent to use is either a criminal or civil infraction.
- ²⁰ Drug paraphernalia “means all equipment, products, and materials of any kind which are used, intended for use, or designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of the controlled substances laws of this state.” Ala. Code § 13A-12-260(a). “It shall be unlawful for any person to use, or to possess with intent to use, or to use to inject, ingest, inhale or otherwise introduce into the human body, drug paraphernalia to... test... a controlled substance.... Any person who violates this subsection is guilty of a Class A misdemeanor....” Ala. Code § 13A-12-260(c). However, as of June 1, 2022, fentanyl testing equipment is specifically exempted: “a person may possess, deliver, or sell testing equipment designed to detect the presence of fentanyl or any synthetic controlled substance fentanyl analogue.” Ala. Code § 13A-12-260(f) (modified by 2022 Ala. Laws Act 2022-154 (S.B. 168)).
- ²¹ “It shall be unlawful for any person to deliver or sell, possess with intent to deliver or sell, or manufacture with intent to deliver or sell drug paraphernalia, knowing that it will be used to... test... a controlled substance.... Any person who violates this section is guilty of a Class A misdemeanor....” Ala. Code § 13A-12-260(e)(1). However, as of June 1, 2022, fentanyl testing equipment is specifically exempted: “a person may possess, deliver, or sell testing equipment designed to detect the presence of fentanyl or any synthetic controlled substance fentanyl analogue.” Ala. Code § 13A-12-260(f) (modified by 2022 Ala. Laws Act 2022-154 (S.B. 168)).
- ²² “Excluding Section 32-5A-191 [charges relating to driving under the influence], an individual may not be prosecuted for a misdemeanor controlled substance offense if law enforcement became aware of the offense solely because the individual was seeking medical assistance for another individual under this article.” Ala. Code § 20-2-281(b); see Ala. Code § 20-2-281(c) (listing Good Samaritan law qualifications).
- ²³ Alaska does not have a statute criminalizing the use or possession with intent to use of drug paraphernalia on the state level. However, some municipalities within Alaska criminalize those activities. See, e.g., North Slope Borough, AK., Code § 11.20.030.
- ²⁴ Alaska does not criminalize the delivery of drug paraphernalia on the state level. However, some municipalities within Alaska criminalize activities related to paraphernalia. See, e.g., North Slope Borough, AK, Code § 11.20.020.
- ²⁵ “[I]t is unlawful for any person to use, or to possess with intent to use, drug paraphernalia to...test...a drug in violation of this chapter. Any person who violates this subsection is guilty of a class 6 felony.” Ariz. Rev. Stat. § 13-3415(A). However, the definition of “drug paraphernalia” was modified to exempt “narcotic drug testing products that are used to determine whether a controlled substance contains fentanyl or a fentanyl analog” as of September 29, 2021. Ariz. Rev. Stat. § 13-3415(F)(2)(d) (modified by 2021 Ariz. Legis. Serv. Ch. 372 (S.B. 1486)).
- ²⁶ “It is unlawful for any person to deliver, possess with intent to deliver or manufacture with intent to deliver drug paraphernalia knowing, or under circumstances where one reasonably should know, that it will be used to...test...a drug in violation of this chapter. Any person who violates this subsection is guilty of a class 6 felony.” Ariz. Rev. Stat. § 13-3415(B). However, the definition of “drug paraphernalia” was modified to exempt “narcotic drug testing products that are used to determine whether a controlled substance contains fentanyl or a fentanyl analog” as of September 29, 2021. Ariz. Rev. Stat. § 13-3415(F)(2)(d) (modified by 2021 Ariz. Legis. Serv. Ch. 372 (S.B. 1486)).
- ²⁷ Employees, volunteers, or participants may not be charged or prosecuted for possession of a “needle, hypodermic syringe, or *other injection supply item* obtained from or returned to [an authorized SSP]” (emphasis added). Ariz. Rev. Stat. § 36-798.52(A)(1). Under this provision, testing equipment obtained from an SSP would likely be covered.
- ²⁸ “A person who, in good faith, seeks medical assistance for someone experiencing a drug-related overdose may not be charged or prosecuted for the possession or use of a controlled substance or drug paraphernalia or a preparatory offense if the evidence for the violation was gained as a result of the person's seeking medical assistance.” Ariz. Rev. Stat. § 13-3423(A). “A person who experiences a drug-related overdose, who is in need of medical assistance and for whom medical assistance is sought pursuant to subsection A of this section [Good Samaritan law, previous provision] may not be charged or prosecuted for the possession or use of a controlled substance or drug paraphernalia if the evidence for the violation was gained as a result of the person's overdose and need for medical assistance.” Ariz. Rev. Stat. § 13-3423(B).
- ²⁹ Drug paraphernalia “means any equipment, product, and material of any kind that are used, intended for use, or designed for use in... testing, analyzing... or otherwise introducing into the human body a controlled substance in violation of this chapter.” Ark. Code Ann. § 5-64-101(12)(A). A person who uses or possesses with the purpose to use drug paraphernalia to...test, analyze...a controlled substance... upon conviction is guilty of a Class D felony.” Ark. Code

Ann. § 5-64-443(b)(1). The same conduct is a Class B felony when the controlled substance is methamphetamine, heroin, fentanyl, or cocaine. Ark. Code Ann. § 5-64-443(b)(2).

³⁰ Arkansas does not generally criminalize the distribution of drug paraphernalia. See *generally* Ark. Code Ann. § 5-64-443. However, it is unlawful in Arkansas to deliver drug paraphernalia, including drug checking equipment, to a person under 18 if the person delivering the paraphernalia is over 18 and at least 3 years older than the recipient. Ark. Code Ann. § 5-64-444. It is also illegal to engage in many activities related to “an illegal drug paraphernalia business.” Ark. Code Ann. § 5-64-802.

³¹ Arkansas’s overdose Good Samaritan law provides protection from some drug possession charges, but does not provide protection for charges related to paraphernalia. See Ark. Code Ann. § 20-13-1704.

³² California’s definition of drug paraphernalia includes “[t]esting equipment designed for use or marketed for use in identifying, or in analyzing the strength, effectiveness, or purity of controlled substances.” Cal. Health & Safety Code § 11014.5(a)(4). Unlike many states, however, California only explicitly criminalizes the possession of drug paraphernalia used for a small number of activities: “It is unlawful to possess an opium pipe or any device, contrivance, instrument, or paraphernalia used for unlawfully injecting or smoking” a controlled substance. Cal. Health & Safety Code § 11364(a).

³³ “Except as authorized by law, any person who delivers, furnishes, or transfers, possesses with intent to deliver, furnish, or transfer, or manufactures with the intent to deliver, furnish, or transfer, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to...test, analyze...a controlled substance, except as provided in subdivision (b) [manufacturing controlled substances], in violation of this division, is guilty of a misdemeanor.” Cal. Health & Safety Code § 11364.7(a)(1).

³⁴ On August 29, 2022, the Governor approved a bill that modifies the definition of “drug paraphernalia” in both Cal. Health & Safety Code § 11014.5 and Cal. Health & Safety Code § 11364.5 such that the term “does not include any testing equipment designed, marketed, intended to be used, or used, to test a substance for the presence of fentanyl, ketamine, gamma hydroxybutyric acid, or any analog of fentanyl.” See 2022 Cal. Legis. Serv. Ch. 201 (A.B. 1598). This change will go into effect January 1, 2023.

³⁵ Per California law, “Staff and volunteers participating in an exchange project authorized by the state, county, city, or city and county pursuant to this chapter shall not be subject to criminal prosecution for violation of any law related to the possession, furnishing, or transfer of hypodermic needles or syringes or *any materials* deemed by a local or state health department to be necessary to prevent the spread of communicable diseases, or to prevent drug overdose, injury, or disability during participation in an exchange project. Program participants shall not be subject to criminal prosecution for possession of needles or syringes or *any materials* deemed by a local or state health department to be necessary to prevent the spread of communicable diseases, or to prevent drug overdose, injury, or disability acquired from an authorized needle and syringe exchange project entity.” Cal. Health & Safety Code § 121349.1 (emphasis added). Further, “A public entity, its agents, or employees shall not be subject to criminal prosecution for distribution of hypodermic needles or syringes or *any materials* deemed by a local or state health department to be necessary to prevent the spread of communicable diseases, or to prevent drug overdose, injury, or disability to participants in clean needle and syringe exchange projects.” Cal. Health & Safety Code § 11364.7(a)(2) (emphasis added). The California Department of Public Health designates all materials included in the California Syringe Exchange Supply Clearinghouse as necessary for the prevention of disease, injury, or overdose. CAL. DEP’T OF PUB. HEALTH, FACT SHEET: CALIFORNIA LAW AND SYRINGE SERVICES PROGRAMS (2021),

[https://www.cdph.ca.gov/Programs/CID/DOA/CDPH%20Document%20Library/CA_Law_SSPs_Factsheet_ADA%20FINAL%20\(April%202021\).pdf](https://www.cdph.ca.gov/Programs/CID/DOA/CDPH%20Document%20Library/CA_Law_SSPs_Factsheet_ADA%20FINAL%20(April%202021).pdf). As fentanyl test strips are made available through the Clearinghouse, they are covered under the aforementioned exemptions. CAL. DEP’T OF PUB. HEALTH, FENTANYL TESTING TO PREVENT OVERDOSE: INFORMATION FOR PEOPLE WHO USE DRUGS AND HEALTHCARE PROVIDERS, https://www.cdph.ca.gov/Programs/CID/DOA/CDPH%20Document%20Library/Fact_Sheet_Fentanyl_Testing_Approved_ADA.pdf.

³⁶ “Notwithstanding any other law, it shall not be a crime for a person to be under the influence of, or to possess for personal use, a controlled substance, controlled substance analog, or drug paraphernalia, if that person, in good faith, seeks medical assistance for another person experiencing a drug-related overdose that is related to the possession of a controlled substance, controlled substance analog, or drug paraphernalia of the person seeking medical assistance, and that person does not obstruct medical or law enforcement personnel.” Cal. Health & Safety Code § 11376.5(a). “Notwithstanding any other law, it shall not be a crime for a person who experiences a drug-related overdose and who is in need of medical assistance to be under the influence of, or to possess for personal use, a controlled substance, controlled substance analog, or drug paraphernalia, if the person or one or more other persons at the scene of the overdose, in good faith, seek medical assistance for the person experiencing the overdose.” Cal. Health & Safety Code § 11376.5(b).

-
- ³⁷ “Testing equipment” is explicitly excluded from the definition of drug paraphernalia as of May 23, 2019: “‘Drug paraphernalia’ does not include...[t]esting equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness, or purity of controlled substances.” Colo. Rev. Stat. § 18-18-426(2)(b).
- ³⁸ “Testing equipment” is explicitly excluded from the definition of drug paraphernalia as of May 23, 2019: “‘Drug paraphernalia’ does not include...[t]esting equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness, or purity of controlled substances.” Colo. Rev. Stat. § 18-18-426(2)(b). Further, as of July 1, 2022, “[A] person who or entity that acts in good faith to furnish a non-laboratory synthetic opiate detection test, including an expired non-laboratory synthetic opiate detection test, to another person is not liable for any civil damages for acts, omissions made as a result of the act, or for any act or omission made if the non-laboratory synthetic opiate detection test is stolen, defective, or produces an inaccurate result.” Colo. Rev. Stat. Ann. § 13-21-108.8 (added by 2022 Colo. Legis. Serv. Ch. 225 (H.B. 22-1326), § 14, eff. July 1, 2022).
- ³⁹ Colorado no longer criminalizes the use, possession with intent to use, or delivery of drug checking equipment. However, there is still a Good Samaritan law exemption specifically for paraphernalia possession: “The immunity described in subsection (1) of this section [Good Samaritan law] shall apply to ,, [p]ossession of drug paraphernalia, as described in section 18-18-428....” Colo. Rev. Stat. § 18-1-711(3)(g); see Colo. Rev. Stat. § 18-1-711(1)-(2).
- ⁴⁰ Drug paraphernalia includes “testing equipment used, intended for use or designed for use in identifying or analyzing the strength, effectiveness or purity of controlled substances.” Conn. Gen. Stat. § 21a-240(20)(A)(iv). “No person shall use or possess with intent to use drug paraphernalia...to...test, analyze...any controlled substance other than cannabis. Any person who violates any provision of this subsection shall be guilty of a class C misdemeanor.” Conn. Gen. Stat. § 21a-267(a). As of July 1, 2022, “‘Drug paraphernalia’ does not include a product used by a manufacturer licensed pursuant to this chapter for the activities permitted under the license or by an individual to test any substance prior to injection, inhalation or ingestion of the substance to prevent accidental overdose by injection, inhalation or ingestion of the substance, provided the licensed manufacturer or individual is not using the product to engage in the unlicensed manufacturing or distribution of controlled substances.” Conn. Gen. Stat. Ann. § 21a-240(20)(A) (modified by 2022 Conn. Legis. Serv. P.A. 22-108 (H.B. 5430) (eff. July 1, 2022).
- ⁴¹ “No person shall deliver, possess with intent to deliver or manufacture with intent to deliver drug paraphernalia knowing, or under circumstances where one reasonably should know, that it will be used to...test, analyze...any controlled substance, other than cannabis. Any person who violates any provision of this subsection shall be guilty of a class A misdemeanor.” Conn. Gen. Stat. § 21a-267(b). As of July 1, 2022, “‘Drug paraphernalia’ does not include a product used by a manufacturer licensed pursuant to this chapter for the activities permitted under the license or by an individual to test any substance prior to injection, inhalation or ingestion of the substance to prevent accidental overdose by injection, inhalation or ingestion of the substance, provided the licensed manufacturer or individual is not using the product to engage in the unlicensed manufacturing or distribution of controlled substances.” Conn. Gen. Stat. Ann. § 21a-240(20)(A) (modified by 2022 Conn. Legis. Serv. P.A. 22-108 (H.B. 5430) (eff. July 1, 2022).
- ⁴² Connecticut law authorizes syringe services programs but does not explicitly provide criminal immunity for either operators or participants of those programs. See Conn. Gen. Stat. § 19a-124.
- ⁴³ “The provisions of subsection (a) of this section [relating to the use or possession with intent to use drug paraphernalia] shall not apply to any person (1) who in good faith, seeks medical assistance for another person who such person reasonably believes is experiencing an overdose from the ingestion, inhalation or injection of intoxicating liquor or any drug or substance, (2) for whom another person, in good faith, seeks medical assistance, reasonably believing such person is experiencing an overdose from the ingestion, inhalation or injection of intoxicating liquor or any drug or substance, or (3) who reasonably believes he or she is experiencing an overdose from the ingestion, inhalation or injection of intoxicating liquor or any drug or substance and, in good faith, seeks medical assistance for himself or herself, if evidence of the use or possession of drug paraphernalia in violation of said subsection was obtained as a result of the seeking of such medical assistance. For the purposes of this subsection, ‘good faith’ does not include seeking medical assistance during the course of the execution of an arrest warrant or search warrant or a lawful search.” Conn. Gen. Stat. § 21a-267(d).
- ⁴⁴ “It is unlawful for any person to use, or possess with intent to use, drug paraphernalia.” Del. Code tit. 16, § 4771(a). “Drug paraphernalia” includes “all equipment, products or materials of any kind which are used, intended for use or designed for use in...testing, analyzing...a controlled substance the manufacture, delivery, possession or use of which is in violation of this chapter.” Del. Code tit. 16, § 4701(18). However, effective June 3, 2021, the prohibitions on drug paraphernalia do not apply to “[t]esting strips to determine the presence of fentanyl or fentanyl-related substances.” Del. Code tit. 16, § 4773(3).
- ⁴⁵ “It is unlawful for any person to deliver, possess with intent to deliver, convert, manufacture, convey, sell or offer for sale drug paraphernalia... knowing or under circumstances where one should reasonably know that it will be used to... test,

- analyze... a controlled substance.” Del. Code tit. 16, § 4771(b). “Any person who delivers, possesses with the intent to deliver, conveys, offers for sale, converts, or manufactures with the intent to deliver drug paraphernalia is guilty of a class G felony.” Del. Code tit. 16, § 4774(c). However, effective June 3, 2021, the prohibitions on drug paraphernalia do not apply to “[t]esting strips to determine the presence of fentanyl or fentanyl-related substances.” Del. Code tit. 16, § 4773(3). A separate law, also effective June 3, 2021, provides protection against some civil damages in some situations related to the delivery of fentanyl testing strips. Del. Code tit. 16, § 2226.
- ⁴⁶ Delaware law exempts drug paraphernalia, including drug checking equipment, from criminal liability when it has been obtained from a syringe exchange: “Exchanges under the sterile needle and syringe exchange program shall be exempt from the provisions of §§ 4762, 4771 [includes charges for use, possession with intent to use, and delivery of drug paraphernalia], and 4772 of Title 16 for the participant [“an injection drug user who exchanges a sterile needle and syringe unit pursuant to the program established in § 7991 of this title”] or for the employees of the Division [“the State Division of Public Health within the Department of Health and Social Services of the State”] or designated program staff, whenever the possession or distribution of the controlled paraphernalia or hypodermic syringe or needle is a direct result of the employee’s or participant’s activities in connection with the work of the program authorized under this subchapter.” Del. Code tit. 29, §§ 7990(2), (4), 7993(a). The Delaware Division of Public Health’s website directs people to the availability of fentanyl checking strips at syringe exchanges. Delaware Division of Public Health, *Overdose Prevention: Get Help, Help is Here Delaware*, <https://www.helpsherede.com/Get-Help/Overdose-Prevention#PharmacistTraining> (last visited Feb. 3, 2021).
- ⁴⁷ “The immunity granted [Good Samaritan law] shall apply to all offenses in this chapter that are not class A, B, or C felonies, including but not limited to ... [p]ossession of drug paraphernalia as described in §§ 4762(c) [charges relating to possession of syringes] and 4771 [charges relating to possession of drug paraphernalia] of this title....” Del. Code tit. 29, § 4769(c)(4). Given that a first-time offense of the delivery of drug paraphernalia is a class G felony and delivery to a minor is a class E felony, these offenses would fall under the purview of Delaware’s Good Samaritan law. Del. Code tit. 29, §§ 4774(c), 4769(c)(4); see Del. Code tit. 29, § 4769(a)-(b) (listing Good Samaritan law definitions and qualifications).
- ⁴⁸ “The term ‘drug paraphernalia’ means all equipment, products, and materials of any kind which are used, intended for use, or designed for use in ... testing... a controlled substance in violation of this chapter or s. 877.111.” Fla. Stat. § 893.145. “It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia... [t]o ... test ... a controlled substance.” Fla. Stat. § 893.147(1).
- ⁴⁹ “It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used... [t]o ... test ... a controlled substance.” Fla. Stat. § 893.147(2).
- ⁵⁰ Florida provides immunity for “needles or syringes as part of an exchange program” only. Fla. Stat. § 381.0038(7)(c).
- ⁵¹ “A person acting in good faith who seeks medical assistance for an individual experiencing, or believed to be experiencing, an alcohol-related or a drug-related overdose may not be arrested, charged, prosecuted, or penalized for a violation of s. 893.147(1) [charges relating to the use or possession with intent to use drug paraphernalia]... if the evidence for such offense was obtained as a result of the person’s seeking medical assistance.” Fla. Stat. § 893.21(1). “A person who experiences, or has a good faith belief that he or she is experiencing, an alcohol-related or a drug-related overdose and is in need of medical assistance may not be arrested, charged, prosecuted, or penalized for a violation of s. 893.147(1) [charges relating to the use or possession with intent to use drug paraphernalia]... if the evidence for such offense was obtained as a result of the person’s seeking medical assistance.” Fla. Stat. § 893.21(2). Florida provides “making a good faith effort to obtain or provide medical assistance for an individual experiencing a drug-related overdose” as a mitigating factor for felony offenses, including charges relating to giving away drug paraphernalia. See Fla. Stat. §§ 893.147(2), 921.0026(2)(n).
- ⁵² “It shall be unlawful for any person to use, or possess with the intent to use, any object or materials of any kind for the purpose of...testing, analyzing...a controlled substance.” Ga. Code Ann. § 16-13-32.2(a).
- ⁵³ “It shall be unlawful for any person or corporation to sell, rent, lease, give, exchange, otherwise distribute, or possess with intent to distribute any object or materials of any kind which such person or corporation intends to be used for the purpose of...testing...a controlled substance.” Ga. Code Ann. § 16-13-32.1(a). It is also unlawful to advertise the delivery of drug paraphernalia, including drug checking equipment. Ga. Code Ann. § 16-13-32(b).
- ⁵⁴ Effective July 1, 2023, “[A]ny testing equipment used to determine whether a controlled substance has been adulterated and contains a synthetic opioid shall not be considered a drug related object as defined by Article 2 of Chapter 13 of Title 16.” 2022 Georgia Laws Act 879 (H.B. 1175) (modifying Ga. Code Ann. § 26-3-22).
- ⁵⁵ Georgia law likely provides protection for the possession or free distribution of drug checking equipment for employees and volunteers of a syringe exchange: “A person employed by or acting as an agent of a registered syringe services

-
- program shall be immune from civil and criminal liability arising from the possession, distribution, or exchange of hypodermic syringes or needles and *related supplies* as part of such syringe services program.” Ga. Code Ann. § 16-13-32(c)(2) (emphasis added). Georgia law does not clarify whether “related supplies” includes drug checking equipment. However, Georgia’s statutes and regulations repeatedly reference the objective of the syringe services program to provide “safer injection supplie[s]” and “evidence based interventions to reduce negative consequences of drug related behaviors.” Ga. Code Ann. § 16-13-32(c)(4); Ga. Comp. R. & Regs. 511-2-9-.04(1)(c), 511-2-9-.01(8), 511-2-9-.05(1)(b)(4)-(5). No protection is provided for participants.
- ⁵⁶ “Any person who in good faith seeks medical assistance for a person experiencing or believed to be experiencing a drug overdose shall not be arrested, charged, or prosecuted for a drug violation if the evidence for the arrest, charge, or prosecution of such drug violation resulted solely from seeking such medical assistance. Any person who is experiencing a drug overdose and, in good faith, seeks medical assistance for himself or herself or is the subject of such a request shall not be arrested, charged, or prosecuted for a drug violation if the evidence for the arrest, charge, or prosecution of such drug violation resulted solely from seeking such medical assistance....” Ga. Code Ann. § 16-13-5(b). “‘Drug violation’ means...[a] violation of Code Section 16-13-32.2, relating to possession and use of drug related objects.” Ga. Code Ann. § 16-13-5(a)(2)(C); see Ga. Code Ann. § 16-13-5(a) (listing relevant definitions).
- ⁵⁷ Drug paraphernalia includes “all equipment, products, and materials of any kind which are used, primarily intended for use, or primarily designed for use, in ...testing... a controlled substance in violation of this chapter.” Haw. Rev. Stat. Ann. § 329-1. “[I]t is unlawful for any person to use, or to possess with intent to use, drug paraphernalia to...test...a controlled substance in violation of this chapter.” Haw. Rev. Stat. Ann. § 329-43.5(a).
- ⁵⁸ “[I]t is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver drug paraphernalia, knowing or under circumstances where one reasonably should know, that it will be used to...test...a controlled substance in violation of this chapter.” Haw. Rev. Stat. Ann. § 329-43.5(b).
- ⁵⁹ Participants, volunteers, and staff of a syringe services program may be exempt from possessing and giving away paraphernalia, including drug checking equipment: “Exchanges under the sterile needle and syringe exchange program shall not constitute an offense under section 329-43.5 [includes the use, possession with intent to use, and delivery of drug paraphernalia] for the participant or for the employees of the department or its designees.” Haw. Rev. Stat. Ann. § 325-114.
- ⁶⁰ “A person or persons who, in good faith, seek medical assistance for someone who is experiencing a drug or alcohol overdose and a person experiencing a drug or alcohol overdose who seeks medical assistance for the person's self or is the subject of such a good faith request shall not be arrested, charged, prosecuted, or convicted; have their property subject to civil forfeiture; or otherwise be penalized for...[p]ossession of a controlled substance or drug paraphernalia under this chapter or part IV of chapter 712...if the evidence for the arrest, charge, prosecution, conviction, seizure, or penalty was gained as a result of the seeking of medical assistance.” Haw. Rev. Stat. Ann. § 329-43.6(b)(1). The Good Samaritan law provides the act of seeking medical assistance for someone who is experiencing a drug or alcohol overdose as a mitigating factor for giving away paraphernalia, including drug checking equipment. See Haw. Rev. Stat. Ann. § 329-43.6(c); see *also* Haw. Rev. Stat. Ann. § 329-43.6(a) (listing relevant definitions).
- ⁶¹ “It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia to...test...a controlled substance.” Idaho Code § 37-2734A(1). “Drug paraphernalia” means “all equipment, products and materials of any kind used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this chapter.” Idaho Code § 37-2701(o).
- ⁶² “It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to... test... a controlled substance.” Idaho Code § 37-2734B.
- ⁶³ Although it is not clear which individuals are specifically exempt, possessing and giving away paraphernalia, including drug checking equipment, is possibly legal for participants, volunteers, and staff of a syringe exchange in Idaho: “Notwithstanding any provision of law to the contrary... [a]n entity [the state department of health and welfare, a government entity, or a private organization, whether for profit or nonprofit] may supply a syringe and needle exchange program with *materials necessary to operate the program* if such entity complies with rules promulgated by the department.” Idaho Code §37-3404(1)(c) (emphasis added). Similar language permits an entity to procure “supplies needed to operate a syringe and needle exchange program.” Idaho Code §37-3404(1)(b). Idaho’s *Operating Recommendations and Requirements* for Idaho Safer Syringe Programs define a syringe exchange program as one that “provides access to sterile syringes, needles, and *other prevention materials*, including cotton filters, bandages, and alcohol swabs.” Idaho Department of Health and Welfare Division of Public Health, *Operating Recommendations and*

Requirements, Idaho Department of Health and Welfare Division of Public Health (July 1, 2020), <https://publicdocuments.dhw.idaho.gov/WebLink/DocView.aspx?id=6084&dbid=0&repo=PUBLIC-DOCUMENTS&cr=1> (emphasis added).

- ⁶⁴ “A person acting in good faith who seeks medical assistance for any person experiencing a drug-related medical emergency shall not be charged or prosecuted for... using or possessing with intent to use drug paraphernalia pursuant to section 37-2734A(1), Idaho Code, if the evidence for the charge of possession of or using or being under the influence of a controlled substance or using or possessing drug paraphernalia was obtained as a result of the person seeking medical assistance.” Idaho Code § 37-2739C(1). “A person who experiences a drug-related medical emergency and is in need of medical assistance shall not be charged or prosecuted for... using or possessing with intent to use drug paraphernalia pursuant to section 37-2734A(1), Idaho Code, if the evidence for the charge of possession of or using or being under the influence of a controlled substance or using or possessing drug paraphernalia was obtained as a result of the medical emergency and the need for medical assistance.” Idaho Code § 37-2739C(2).
- ⁶⁵ “A person who knowingly possesses an item of drug paraphernalia with the intent to use it in ingesting, inhaling, or otherwise introducing a controlled substance into the human body, or in preparing a controlled substance for that use, is guilty of a Class A misdemeanor for which the court shall impose a minimum fine of \$750 in addition to any other penalty prescribed for a Class A misdemeanor.” 720 Ill. Comp. Stat. 600/3.5(a). Under Illinois law, drug paraphernalia includes “all equipment, products and materials of any kind, other than methamphetamine manufacturing materials as defined in Section 10 of the Methamphetamine Control and Community Protection Act and cannabis paraphernalia as defined in Section 1-10 of the Cannabis Regulation and Tax Act, which are intended to be used unlawfully in... testing, analyzing... a controlled substance in violation of the Illinois Controlled Substances Act.” 720 Ill. Comp. Stat. 600/2(d).
- ⁶⁶ Illinois does not criminalize the free distribution of drug paraphernalia. See *generally* 720 Ill. Comp. Stat. 600. Illinois generally criminalizes the sale of drug paraphernalia. 720 Ill. Comp. Stat. 600/3(a). However, a law effective June 2, 2022, provides that certain health professionals “may dispense drug adulterant testing supplies to any person” and imposes restrictions on where they can be stored and the locations from which they can be distributed. 410 Ill. Comp. Stat. 710/10.
- ⁶⁷ Possessing drug paraphernalia, including drug checking equipment, is legal for participants, volunteers, and staff of an SSP in Illinois: “Notwithstanding any provision of the Illinois Controlled Substances Act, the Drug Paraphernalia Control Act, or any other law, no employee or volunteer of or participant in a program established under [the Overdose Prevention and Harm Reduction Act] shall be charged with or prosecuted for possession of ... [d]rug adulterant testing supplies obtained from or returned, directly or indirectly, to a program established under this Act or a pharmacy, hospital, clinic, or other health care facility or medical office dispensing drug adulterant testing supplies in accordance with Section 10. This paragraph also applies to any employee or customer of a pharmacy, hospital, clinic, or other health care facility or medical office dispensing drug adulterant testing supplies in accordance with Section 10.” 410 Ill. Comp. Stat. 710/5(c)(3).
- ⁶⁸ The Illinois Good Samaritan law was modified effective April 27, 2021, to provide immunity for the possession of drug paraphernalia. See 720 Ill. Comp. Stat. 570/414(b); 720 Ill. Comp. Stat. 646/115(b).
- ⁶⁹ “A person who knowingly or intentionally possesses an instrument, a device, or another object that the person intends to use for...testing the strength, effectiveness, or purity of a controlled substance...commits a Class C misdemeanor. However, the offense is a Class A misdemeanor if the person has a prior unrelated judgment or conviction under this section.” Ind. Code § 35-48-4-8.3(b).
- ⁷⁰ “A person who keeps for sale, offers for sale, delivers, or finances the delivery of a raw material, an instrument, a device, or other object that is intended to be or that is designed or marketed to be used primarily for...testing the strength, effectiveness, or purity of marijuana, hash oil, hashish, salvia, a synthetic drug, or a controlled substance...commits a Class A infraction for dealing in paraphernalia.” Ind. Code § 35-48-4-8.5(a). “A person who knowingly or intentionally violates subsection (a) commits a Class A misdemeanor. However, the offense is a Level 6 felony if the person has a prior unrelated judgment or conviction under this section.” Ind. Code § 35-48-4-8.5(b).
- ⁷¹ The distribution of drug checking equipment is likely legal for volunteers and staff of a syringe services program: “This section [which prohibits delivery of objects intended, designed, or marketed to be used primarily for testing the strength, effectiveness, or purity of a controlled substance] does not apply to ... [a] qualified entity (as defined in IC 16-41-7.5-3) that provides a syringe or needle as part of a program under IC 16-41-7.5 [syringe exchange program].” Ind. Code § 35-48-4-8.5(c)(3). The provision outlining the duties of a syringe exchange program includes requirements to “[o]perate in a manner consistent with public health and safety” and “[e]nsure the program is medically appropriate and part of a comprehensive public health response.” Ind. Code § 16-41-7.5-6(7)-(8). However, it is not clear which individuals are provided immunity under this provision.

- ⁷² “A law enforcement officer may not take an individual into custody based solely on the commission of an offense described in subsection (h) [including IC 35-48-4-8.3 (possession of paraphernalia)], if the law enforcement officer, after making a reasonable determination and considering the facts and surrounding circumstances, reasonably believes that the individual... [lists factors including seeking medical emergency response for another person experiencing an overdose].” Ind. Code § 16-42-27-2(g), (h)(4); see Ind. Code § 16-42-27-2(g)(1)-(7) (lists Good Samaritan law qualifications).
- ⁷³ “It is unlawful for any person to knowingly or intentionally manufacture, deliver, sell, or possess drug paraphernalia.” Iowa Code § 124.414(2). The definition of “drug paraphernalia” includes equipment and products “to knowingly or intentionally and primarily...test the strength, effectiveness, or purity of a controlled substance.” Iowa Code § 124.414(1)(a)(3).
- ⁷⁴ “It is unlawful for any person to knowingly or intentionally manufacture, deliver, sell, or possess drug paraphernalia.” Iowa Code § 124.414(2). “A person who violates this section commits a simple misdemeanor.” Iowa Code § 124.414(3).
- ⁷⁵ “Protected information shall not be considered to support probable cause and shall not be admissible as evidence against an overdose patient or overdose reporter for ... [v]iolation of section 124.414 [prohibits knowingly and unlawfully testing the strength, effectiveness of purity of a controlled substance].” Iowa Code § 124.418(2)(d).
- ⁷⁶ “It shall be unlawful for any person to use or possess with intent to use any drug paraphernalia to...test...a controlled substance.” Kan. Stat. Ann. § 21-5709(b)(1). Drug paraphernalia means “all equipment and materials of any kind that are used, or primarily intended or designed for use in...testing, analyzing... a controlled substance and in violation of this act.” Kan. Stat. Ann. § 21-5701(f).
- ⁷⁷ “It shall be unlawful for any person to distribute, possess with intent to distribute or manufacture with intent to distribute any drug paraphernalia, knowing or under circumstances where one reasonably should know, that it will be used as such in violation of [provisions including subsection (b) of 21-5709 relating to the use or possession with intent to use of drug paraphernalia].” Kan. Stat. Ann. § 21-5710(c). “It shall be unlawful for any person to distribute, possess with intent to distribute or manufacture with intent to distribute any drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used as such in violation of subsection (b) of K.S.A. 21-5706 [possession of a controlled substance].” Kan. Stat. Ann. § 21-5710(d).
- ⁷⁸ Kansas has not passed an overdose Good Samaritan law.
- ⁷⁹ “It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia for the purpose of...testing...a controlled substance in violation of this chapter.” Ky. Rev. Stat. Ann. § 218A.500(2). Drug paraphernalia includes “all equipment, products and materials of any kind which are used, intended for use, or designed for use in...testing, analyzing... or otherwise introducing into the human body a controlled substance in violation of this chapter.” Ky. Rev. Stat. Ann. § 218A.500(1).
- ⁸⁰ “It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to...test, analyze...a controlled substance in violation of this chapter.” Ky. Rev. Stat. Ann. § 218A.500(3).
- ⁸¹ Per Kentucky law, “Items exchanged at the program shall not be deemed drug paraphernalia under this section [includes possessing and giving away drug paraphernalia] while located at the program [a substance abuse treatment outreach program which allows participants to exchange hypodermic needles and syringes].” Ky. Rev. Stat. Ann. § 218A.500(5)(c). Notably, according to an opinion by the state’s Attorney General regarding whether harm reduction and syringe exchange programs (HRSEPs) may provide syringes regardless of whether the participant has syringes to exchange, “If the legislature had wished to limit HRSEPs to a specific type of program, rather than allowing flexibility in determining which type of HRSEP to offer, it could have done so.” Ky. Att’y Gen. Op. No. 15-018 (Dec 18, 2015), 2015 Ky. AG LEXIS 232. Following the same line of reasoning, if the legislature had wished to limit the items exempt from the drug paraphernalia statute while located at a syringe services program, it could have done so. Further, the Kentucky Cabinet for Health and Family Services website notes that “[syringe services programs] are a great resource to obtain harm reduction supplies such as sterile syringes, naloxone, wound care kits and fentanyl test strips.” *Harm Reduction Program*, KY. DEP’T FOR PUB. HEALTH, <https://chfs.ky.gov/agencies/dph/Pages/harmreduction.aspx> (last visited Sept. 30, 2022).
- ⁸² “A person shall not be charged with or prosecuted for a criminal offense prohibiting the possession of a controlled substance or the possession of drug paraphernalia if... [lists relevant factors].” Ky. Rev. Stat. Ann. § 218A.133(2).
- ⁸³ “It is unlawful for any person to use, or to possess with intent to use, any drug paraphernalia, to...test, analyze...a controlled substance in violation of this Part.” La. Stat. Ann. § 40:1023(C). Drug paraphernalia means all “equipment, products, and materials of any kind which are used, intended for use, or designed for use in...testing, analyzing... or otherwise introducing into the human body a controlled substance in violation of the Uniform Controlled Dangerous Substances Law.” La. Stat. Ann. § 40:1021(1). Effective August 1, 2022, the definition of ‘drug paraphernalia’ excludes

-
- "rapid fentanyl test strips (FTS) or any testing equipment or devices solely used, intended for use, or designed to determine whether a substance contains fentanyl or its analogues." 2022 La. Sess. Law Serv. Act 137 (H.B. 212).
- ⁸⁴ "It is unlawful for any person or corporation, knowing, or under circumstances where one reasonably should know, to sell, lend, rent, lease, give, exchange, or otherwise distribute to any person any drug paraphernalia." La. Stat. Ann. § 40:1023(A). "It is unlawful for any person or corporation, knowing, or under circumstances where one reasonably should know, to...possess with the intent to distribute, any drug paraphernalia." La. Stat. Ann. § 40:1023(B). Effective August 1, 2022, the definition of 'drug paraphernalia' excludes "rapid fentanyl test strips (FTS) or any testing equipment or devices solely used, intended for use, or designed to determine whether a substance contains fentanyl or its analogues." 2022 La. Sess. Law Serv. Act 137 (H.B. 212).
- ⁸⁵ Although it does not clearly exempt particular individuals, Louisiana law provides a broad exemption to the state paraphernalia law for SSPs: "Any provision of law to the contrary herein notwithstanding, the provisions of this Part [including prohibitions on the use, possession with intent to use, and delivery of drug paraphernalia] shall not prohibit the establishment and implementation of a needle exchange program within the jurisdiction of a local governing authority, including but not limited to a city, town, or parish, upon the express approval of the local governing authority." La. Stat. Ann. § 40:1024(C). We interpret this as meaning that those provisions do not apply to SSP operators or clients.
- ⁸⁶ Effective August 1, 2022, Louisiana's overdose Good Samaritan law provides protection from paraphernalia-related charges: "A person acting in good faith who seeks medical assistance for an individual experiencing a drug-related overdose may not be charged, prosecuted, or penalized for possession or use of a controlled dangerous substance under the Uniform Controlled Dangerous Substances Law or of possession of drug paraphernalia as defined in R.S. 40:1021, if the evidence for such offenses was obtained as a result of the person's seeking medical assistance." 2022 La. Sess. Law Serv. Act 225 (H.B. 601).
- ⁸⁷ Effective October 18, 2021, all references to testing and analyzing, as well as specific mentions of testing equipment, were removed from Maine's definition of drug paraphernalia. See Me. Rev. Stat. tit. 17-A, § 1111-A(1) (modified by 2021 Me. Legis. Serv. Ch. 434 (H.P. 732) (L.D. 994)).
- ⁸⁸ Effective October 18, 2021, all references to testing and analyzing, as well as specific mentions of testing equipment, were removed from Maine's definition of drug paraphernalia. See Me. Rev. Stat. tit. 17-A, § 1111-A(1) (modified by 2021 Me. Legis. Serv. Ch. 434 (H.P. 732) (L.D. 994)).
- ⁸⁹ Maine law impliedly permits the possession, transportation, and exchange of "hypodermic apparatuses" distributed by or returned to syringe services programs. However, no such carve-out exists for drug checking equipment. See 22 M.R.S.A. § 1341.
- ⁹⁰ Except for certain specified crimes unrelated to drug paraphernalia, "a protected person is immune from arrest or prosecution for a violation of law if: A. The grounds for the arrest or prosecution are obtained as a result of a medical professional's or law enforcement officer's responding to a request for medical assistance; or B. The identity of the protected person is learned or the protected person is identified as a person subject to arrest or prosecution as a result of a medical professional's or law enforcement officer's responding to a request for medical assistance." Me. Stat. tit. 17-A, §1111-B(2).
- ⁹¹ The definition of "drug paraphernalia" continues to include "testing equipment used, intended for use, or designed for use in analyzing the strength, effectiveness, or purity of a controlled dangerous substance." See Md. Code Ann., Crim. Law § 5-101(p)(2)(iv). However, state law was modified effective June 1, 2018, to remove "test" and "analyze" from the list of activities that it is impermissible to undertake with drug paraphernalia. The law currently reads as follows: "Unless authorized under this title, a person may not use or possess with intent to use drug paraphernalia to: (i) plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, pack, repack, store, contain, or conceal a controlled dangerous substance; or (ii) inject, ingest, inhale, or otherwise introduce into the human body a controlled dangerous substance." Md. Code Ann., Crim. Law § 5-619(c)(2)(i)-(ii).
- ⁹² The definition of "drug paraphernalia" continues to include "testing equipment used, intended for use, or designed for use in analyzing the strength, effectiveness, or purity of a controlled dangerous substance." See Md. Code Ann., Crim. Law § 5-101(p)(2)(iv). However, state law was modified effective June 1, 2018, to remove "test" and "analyze" from the list of activities that it is impermissible to undertake with drug paraphernalia. The law currently reads as follows: "Unless authorized under this title, a person may not deliver or sell... drug paraphernalia to: (i) plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, pack, repack, store, contain, or conceal a controlled dangerous substance; or (ii) inject, ingest, inhale, or otherwise introduce into the human body a controlled dangerous substance." Md. Code Ann., Crim. Law § 5-619(d)(2)(i)-(ii). It is also unlawful to advertise the delivery of drug paraphernalia in certain circumstances. Md. Code Ann., Crim. Law § 5-619(e).

-
- ⁹³ “No Program staff member or Program participant may be found guilty of violating [laws related to controlled substances and drug paraphernalia] for possessing or distributing controlled paraphernalia or drug paraphernalia whenever the possession or distribution of the controlled paraphernalia or drug paraphernalia is a direct result of the employee's or participant's activities in connection with the work of the Program authorized under this subtitle.” Md. Code Ann., Health - General § 24-808(a).
- ⁹⁴ “A person who, in good faith, seeks, provides, or assists with the provision of medical assistance for a person reasonably believed to be experiencing a medical emergency after ingesting or using alcohol or drugs shall be immune from criminal arrest, charge, or prosecution for a violation of...§ 5-619 [including use, possession with intent to use, and the delivery of drug paraphernalia]...of the Criminal Law Article if the evidence for the criminal arrest, charge, or prosecution was obtained solely as a result of the person's seeking, providing, or assisting with the provision of medical assistance.” Md. Code Ann., Crim. Law § 1–210(b). “A person who reasonably believes that the person is experiencing a medical emergency after ingesting or using alcohol or drugs shall be immune from criminal arrest, charge, or prosecution for a violation of...§ 5-619 [including charges for use, possession with intent to use, and delivery of drug paraphernalia]...of the Criminal Law Article if the evidence for the criminal arrest, charge, or prosecution was obtained solely as a result of the person seeking or receiving medical assistance.” Md. Code Ann., Crim. Law § 1–210(c); see Md. Code Ann., Crim. Law § 1–210(a) (listing relevant definitions).
- ⁹⁵ Massachusetts does not criminalize the use or possession with intent to use drug paraphernalia. See *generally* Mass. Gen. Laws ch. 94C, § 32I.
- ⁹⁶ Massachusetts does not criminalize the free distribution of drug paraphernalia. See *generally* Mass. Gen. Laws ch. 94C, § 32I. However, Massachusetts does criminalize the sale of drug paraphernalia; it is unlawful to “sell, possess or purchase with intent to sell, or manufacture with intent to sell drug paraphernalia.” Mass. Gen. Laws ch. 94C, § 32I(a).
- ⁹⁷ Further, case law has clarified that state approval is not required for a program to freely distribute syringes. *AIDS Support Group of Cape Cod, Inc. v. Town of Barnstable*, 447 Mass. 296, 76 N.E.3d 969 (2017).
- ⁹⁸ The Massachusetts Good Samaritan law does not include charges related to drug paraphernalia. See Mass. Gen. Laws ch. 94C, § 34A(a), (b).
- ⁹⁹ Michigan does not criminalize the use or possession with intent to use drug paraphernalia. See *generally* Mich. Comp. Laws § 333.7451-61. However, some municipalities within Michigan criminalize these activities. See *e.g.*, Zeeland, Mich., Code § 28-290(b).
- ¹⁰⁰ Michigan does not criminalize the free delivery of drug paraphernalia. See *generally* Mich. Comp. Laws §§ 333.7451-333.7461. However, some municipalities within Michigan criminalize these activities. See *e.g.*, Zeeland, Mich., Code § 28-290(c). Note that it is unlawful to sell or offer for sale drug paraphernalia knowing that it will be used to “...test, analyze...” a controlled substance, although the person accused must be notified in writing not less than two business days before they are to be arrested that they are subject to arrest under this provision. Mich. Comp. Laws § 333.7453.
- ¹⁰¹ Although Michigan does not criminalize the use, possession with intent to use, or non-sale delivery of drug paraphernalia, it has a statutory provision that might exempt the sale of drug checking equipment: “Sections 7451 to 7455 [including Section 7453, which criminalizes the sale of drug paraphernalia] do not apply to ... [a]n object sold, offered for sale, or given away by a state or local governmental agency or by a person specifically authorized by a state or local governmental agency to prevent the transmission of infectious agents.” Mich. Comp. Laws § 333.7457(f).
- ¹⁰² Michigan does not criminalize the use, possession with intent to use, or non-sale delivery of drug paraphernalia on the state level. See *generally* Mich. Comp. Laws §§ 333.7451-61. Michigan's Good Samaritan laws do not mention drug paraphernalia. See Mich. Comp. Laws Ann. §§ 333.7403(3), 333.7404(3).
- ¹⁰³ “Except as otherwise provided in paragraph (b), ‘drug paraphernalia’ means all equipment, products, and materials of any kind, except those items used in conjunction with permitted uses of controlled substances under this chapter or the Uniform Controlled Substances Act, which are knowingly or intentionally used primarily in... 3) testing the strength, effectiveness, or purity of a controlled substance....” Minn. Stat. Ann. § 152.01 subdiv. 18(a). “It is unlawful for any person knowingly or intentionally to use or to possess drug paraphernalia. Any violation of this section is a petty misdemeanor.” Minn. Stat. § 152.092(a). However, “products that detect the presence of fentanyl or a fentanyl analog in a controlled substance” are specifically excluded from the definition of drug paraphernalia as of July 1, 2021. Minn. Stat. § 152.01 subdiv. 18(b)(2).
- ¹⁰⁴ “It is unlawful for any person knowingly or intentionally to deliver drug paraphernalia or knowingly or intentionally to possess or manufacture drug paraphernalia for delivery. Any violation of this section is a misdemeanor.” Minn. Stat. § 152.093. However, “products that detect the presence of fentanyl or a fentanyl analog in a controlled substance” are specifically excluded from the definition of drug paraphernalia. Minn. Stat. § 152.01 subdiv. 18(b)(2).

-
- ¹⁰⁵ Minnesota does not explicitly permit SSPs. While drug paraphernalia does not include the possession, manufacture, delivery, or sale of products that detect the presence of fentanyl or a fentanyl analog in a controlled substance, there is no such carve-out for other testing equipment. See Minn. Stat. § 152.01 subdiv. 18(b).
- ¹⁰⁶ “[P]roducts that detect the presence of fentanyl or a fentanyl analog in a controlled substance” are specifically excluded from the definition of drug paraphernalia. Minn. Stat. § 152.01 subdiv. 18(b)(2). However, “[a] person acting in good faith who seeks medical assistance for another person who is experiencing a drug-related overdose may not be charged or prosecuted for... possession of drug paraphernalia.” Minn. Stat. § 604A.05 subdiv. 1; see Minn. Stat. § 604A.05 subdiv. 1(1), (2) (listing relevant factors). “A person who experiences a drug-related overdose and is in need of medical assistance may not be charged or prosecuted for... possession of drug paraphernalia. A person qualifies for the immunities provided in this subdivision only if the evidence for the charge or prosecution was obtained as a result of the drug-related overdose and the need for medical assistance.” Minn. Stat. § 604A.05 subdiv. 2. “The act of providing first aid or other medical assistance to someone who is experiencing a drug-related overdose” may be a mitigating factor for charges including the delivery of drug paraphernalia. See Minn. Stat. § 604A.05 subdiv. 4; see *also* Minn. Stat. § 604A.05 subdiv. 5 (defining drug-related overdose).
- ¹⁰⁷ “It is unlawful for a person who is not authorized by the State Board of Medical Licensure, State Board of Pharmacy, or other lawful authority to use, or to possess with intent to use, paraphernalia to...test, analyze...a controlled substance in violation of the Uniform Controlled Substances Law.” Miss. Code Ann. § 41-29-139(d)(1). “Paraphernalia’ means all equipment, products and materials of any kind which are used, intended for use, or designed for use, in...testing, analyzing,...or otherwise introducing into the human body a controlled substance in violation of the Uniform Controlled Substances Law.” Miss. Code Ann. § 41-29-105(v)(i).
- ¹⁰⁸ “It is unlawful for any person to deliver, sell, possess with intent to deliver or sell, or manufacture with intent to deliver or sell, paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to...test, analyze...a controlled substance in violation of the Uniform Controlled Substances Law.” Miss. Code Ann. § 41-29-139(d)(2).
- ¹⁰⁹ Mississippi’s overdose Good Samaritan law exempts offenses located in Miss. Code Ann. § 41-29-139(d)(2), which prohibits delivery, sales, possession with intent to deliver or sell, and manufacture of drug paraphernalia. Miss. Code Ann. § 41-29-149.1(2)(b)(iii). However, the law refers to this provision as “relating to possession and use of paraphernalia,” so it is not clear whether use, possession with intent to use, and/or the delivery of drug paraphernalia are exempted (possession and use are prohibited by Miss. Code Ann. § 41-29-139(d)(1)). See Miss. Code Ann. § 41-29-149.1(2)(b)(iii).
- ¹¹⁰ “A person commits the offense of unlawful possession of drug paraphernalia if he or she knowingly uses, or possesses with intent to use, drug paraphernalia to...test, analyze...a controlled substance or an imitation controlled substance.” Mo. Rev. Stat. § 579.074(1). “Drug paraphernalia...includes, but is not limited to: Testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness or purity of controlled substances or imitation controlled substances.” Mo. Rev. Stat. § 195.010(18)(d).
- ¹¹¹ “A person commits the offense of unlawful distribution, delivery, or sale of drug paraphernalia if he or she unlawfully distributes, delivers, or sells, or possesses with intent to distribute, deliver, or sell drug paraphernalia knowing, or under circumstances in which one reasonably should know, that it will be used to... test, analyze... a controlled substance or an imitation controlled substance in violation of this chapter.” Mo. Rev. Stat. § 579.040(1).
- ¹¹² “A person who, in good faith, seeks or obtains medical assistance for someone who is experiencing a drug or alcohol overdose or other medical emergency or a person experiencing a drug or alcohol overdose or other medical emergency who seeks medical assistance for himself or herself or is the subject of a good faith request shall not be arrested, charged, prosecuted, convicted, or have his or her property subject to civil forfeiture or otherwise be penalized for the following if the evidence for the arrest, charge, prosecution, conviction, seizure, or penalty was gained as a result of seeking or obtaining medical assistance: ... [c]ommitting a prohibited act under section...579.074 [including use or possession with intent to use drug paraphernalia].” Mo. Rev. Stat. § 195.205(2)(1).
- ¹¹³ “[I]t is unlawful for a person to use or to possess with intent to use drug paraphernalia to... test, analyze... a dangerous drug.” Mont. Code Ann. § 45-10-103. Drug paraphernalia includes “testing equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness, or purity of dangerous drugs”. Mont. Code Ann. § 45-10-101(1)(d).
- ¹¹⁴ “It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver drug paraphernalia, knowing or under circumstances where one reasonably should know that it will be used to...test, analyze... a dangerous drug.” Mont. Code Ann. § 45-10-104.
- ¹¹⁵ Under Montana law, “The provisions of this part [including prohibitions on possessing and giving away drug paraphernalia] do not apply to...persons acting as employees or volunteers of an organization, including a nonprofit

community-based organization, local health department, or tribal health department, that provides needle and syringe exchange services to prevent and reduce the transmission of communicable diseases.” Mont. Code Ann. § 45-10-107(3).

¹¹⁶ “The provisions of [law relating to paraphernalia possession] do not apply to: (a) a person who, acting in good faith, seeks medical assistance for another person who is experiencing an actual or reasonably perceived drug-related overdose if the evidence supporting an arrest, charge, or prosecution was obtained as a result of the person's seeking medical assistance for another person; or (b) a person who experiences a drug-related overdose and is in need of medical assistance if the evidence supporting an arrest, charge, or prosecution was obtained as a result of the drug-related overdose and the need for medical assistance.” Mont. Code Ann. § 50-32-609(1). They also do not apply to “a pregnant woman seeking or receiving evaluation, treatment, or support services for a substance use disorder.” Mont. Code Ann. § 50-32-609(2). Further, “A person's act of providing first aid or other medical assistance to a person who is experiencing an actual or reasonably perceived drug-related overdose may be used as a mitigating factor in a criminal prosecution for which immunity is not provided under this section [including the delivery of drug paraphernalia].” Mont. Code Ann. § 50-32-609(5).

¹¹⁷ “It shall be unlawful for any person to use, or to possess with intent to use, drug paraphernalia to manufacture, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance.” Neb. Rev. Stat. § 28-441(1). Nebraska's definition of drug paraphernalia does not include “testing equipment,” but includes “all equipment, products, and materials of any kind which are used, intended for use, or designed for use, in manufacturing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance.” Neb. Rev. Stat. § 28-439. Unlike some other state paraphernalia laws, Nebraska's has not been modified since 1980. Notably, testing equipment was not removed from the law; it was simply never present.

¹¹⁸ “It shall be unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing, or under circumstances in which one reasonably should know, that it will be used to manufacture, inject, ingest, or inhale or otherwise be used to introduce into the human body a controlled substance.” Neb. Rev. Stat. § 28-442(1). Nebraska's definition of drug paraphernalia does not include “testing equipment,” but includes “all equipment, products, and materials of any kind which are used, intended for use, or designed for use, in manufacturing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance.” Neb. Rev. Stat. § 28-439.

¹¹⁹ “A person shall not be in violation of section 28-441 [use and possession with intent to use drug paraphernalia]... if... [s]uch person made a good faith request for emergency medical assistance in response to a drug overdose of himself, herself, or another... [listing additional factors].” Neb. Rev. Stat. § 28-472(1); see Neb. Rev. Stat. § 28-472(1)(b)-(d), (2) (including additional relevant factors). “A person shall not be in violation of section 28-441 [use and possession with intent to use drug paraphernalia]... if such person was experiencing a drug overdose and the evidence for such violation was obtained as a result of the drug overdose and a request for medical assistance by another person made in compliance with subsection (1) of this section.” Neb. Rev. Stat. § 28-472(3); see Neb. Rev. Stat. § 28-472(6) (defining “drug overdose”).

¹²⁰ “Any person who uses, or possesses with intent to use, drug paraphernalia to...test, analyze...a controlled substance in violation of this chapter is guilty of a misdemeanor.” Nev. Rev. Stat. § 453.566. Drug paraphernalia includes “[t]esting equipment, other than testing products, used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness or purity of controlled substances”. Nev. Rev. Stat. § 453.554(1)(d). However, as of May 28, 2021, the definition for drug paraphernalia does not include “testing products,” which are defined as “a product, including, without limitation, a fentanyl test strip, that analyzes a controlled substance for the presence of adulterants.” Nev. Rev. Stat. § 453.554(2)(b); (3).

¹²¹ “[A] person who delivers or sells, possesses with the intent to deliver or sell, or manufactures with the intent to deliver or sell any drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to...test, analyze...a controlled substance in violation of this chapter is guilty of a category E felony and shall be punished as provided in NRS 193.130 [categories and punishment of felonies].” Nev. Rev. Stat. § 453.560. There are increased penalties for delivering drug paraphernalia, including drug checking equipment, to a minor. Nev. Rev. Stat. § 453.562.

¹²² Likely because hypodermic syringes, needles, and other injection equipment are not considered paraphernalia in Nevada, the state syringe access law only provides exemption from civil liability: “The State, any political subdivision thereof, a sterile hypodermic device program and the staff and volunteers thereof are not subject to civil liability in relation to any act or failure to act in connection with the operation of a sterile hypodermic device program, if the act or failure to act was in good faith for the purpose of executing the provisions of NRS 439.985 to 439.994, inclusive [provisions authorizing the establishment of and providing guidelines for a sterile hypodermic device program], and was

- not a reckless act or failure to act.” Nev. Rev. Stat. § 439.992. However, state law permits a “sterile hypodermic device program” to provide “[s]terile hypodermic devices and other related material for safer injection drug use,” which may permit the provision of drug checking equipment. Nev. Rev. Stat. § 439.991.
- ¹²³ “Notwithstanding any other provision of law, a person who, in good faith, seeks medical assistance for a person who is experiencing a drug or alcohol overdose or other medical emergency or who seeks such assistance for himself or herself, or who is the subject of a good faith request for such assistance may not be arrested, charged, prosecuted or convicted, or have his or her property subjected to forfeiture, or be otherwise penalized for violating...a provision of chapter 453 of NRS relating to...[d]rug paraphernalia, including, without limitation, NRS 453.554 to 453.566 [including the use, possession with intent to use, and delivery of drug paraphernalia], inclusive.” Nev. Rev. Stat. § 453C.150(1)(a)(1); see Nev. Rev. Stat. § 453C.150(3), (5) (defining relevant terms).
- ¹²⁴ New Hampshire does not criminalize the use or possession with intent to use drug paraphernalia. See N.H. Rev. Stat. Ann. § 318-B:2.
- ¹²⁵ “It shall be unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing that it will be used or is customarily intended to be used to...test, analyze...a controlled substance.” N.H. Rev. Stat. Ann. § 318-B:2(II). “A person shall be guilty of a misdemeanor who...[m]anufactures with the intent to deliver, delivers or possesses with the intent to deliver any drug paraphernalia when such paraphernalia is knowingly manufactured, delivered or possessed for one or more of the uses set forth in RSA 318-B:2, II [including testing a controlled substance].” N.H. Rev. Stat. Ann. § 318-B:26(III)(c).
- ¹²⁶ State law permits certain entities to operate syringe services programs “to prevent the transmission of disease and reduce morbidity and mortality among individuals who inject drugs, and those individuals’ contacts.” N.H. Rev. Stat. Ann. § 318-B:43(1)(a). Among other things, such programs are required, as appropriate, to provide “sterile needles, syringes, and *other drug preparation equipment* and disposal services.” N.H. Rev. Stat. Ann. § 318-B:43(II)(C)(1) (emphasis added); see *generally* N.H. Rev. Stat. Ann. § 318-B:43. As noted, possession of drug paraphernalia is not illegal in the state.
- ¹²⁷ The New Hampshire Good Samaritan law exempts “an offense of possessing or having under his or her control, a controlled drug in violation of RSA 318-B:2.” N.H. Rev. Stat. Ann. § 318-B:28-b(II), (III). Although prohibitions related to the delivery of drug paraphernalia are included in that subsection, a plain reading of the Good Samaritan law only exempts offenses specifically related to the possession of a “controlled drug”. See N.H. Rev. Stat. Ann. § 318-B:28-b(II), (III).
- ¹²⁸ “It shall be unlawful for any person to use, or to possess with intent to use, drug paraphernalia to... test, analyze... or otherwise introduce into the human body a controlled dangerous substance, controlled substance analog or toxic chemical in violation of the provisions of chapter 35 of this title, other than when used, or possessed with intent to use, for ingesting, inhaling, or otherwise introducing marijuana or hashish into the human body.” N.J. Stat. § 2C:36-2(a); N.J. Stat. § 2C:36-1(a)(4). However, effective January 18, 2022, the definition of ‘drug paraphernalia’ excludes fentanyl test strips. See N.J. Stat. § 2C:36-1(a)(4) (modified by 2021 N.J. Sess. Law Serv. Ch. 403 (S.B. 3493)).
- ¹²⁹ “It shall be unlawful for any person to distribute or dispense, or possess with intent to distribute or dispense, or manufacture with intent to distribute or dispense, drug paraphernalia, knowing that it will be used to... test, analyze... or otherwise introduce into the human body a controlled dangerous substance, controlled substance analog or toxic chemical in violation of the provisions of chapter 35 of this title.” N.J. Stat. 2C:36-3. However, effective January 18, 2022, the definition of ‘drug paraphernalia’ excludes fentanyl test strips. See N.J. Stat. § 2C:36-1(a)(4) (modified by 2021 N.J. Sess. Law Serv. Ch. 403 (S.B. 3493)).
- ¹³⁰ New Jersey exempts “the possession of a hypodermic syringe or needle” from the paraphernalia laws for participants, employees, and volunteers of SSPs. It does not provide protection for other materials. N.J. Stat. 2C:36-6a.
- ¹³¹ “A person who experiences a drug overdose and who seeks medical assistance or is the subject of a good faith request for medical assistance pursuant to section 4 of this act shall not be... arrested, charged, prosecuted, or convicted for using or possessing with intent to use drug paraphernalia pursuant to N.J. Stat. 2C:36-2.” N.J. Stat. 2C:35-31(a)(6). “The provisions of subsection a. of this section shall only apply if the evidence for an arrest, charge, prosecution, conviction or revocation was obtained as a result of the seeking of medical assistance.” N.J. Stat. 2C:35-31(b).
- ¹³² Drug paraphernalia includes “testing equipment used, intended for use or designed for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances or controlled substance analogs.” N.M. Stat. Ann. § 30-31-2(T)(4). “It is unlawful for a person to use or possess with intent to use drug paraphernalia to...test, analyze...a controlled substance in violation of the Controlled Substances Act.” N.M. Stat. Ann. § 30-31-25.1(A). However, “supplies or devices used for the testing of controlled substances or controlled substance analogs for dangerous adulterants”

were exempted from this prohibition effective May 18, 2022. N.M. Stat. Ann. § 30-31-25.1(A)(3) (modified by 2022 New Mexico Laws Ch. 4 (H.B. 52)).

¹³³ “It is unlawful for a person to deliver, possess with intent to deliver or manufacture with the intent to deliver drug paraphernalia with knowledge, or under circumstances where one reasonably should know, that it will be used to...test, analyze...a controlled substance in violation of the Controlled Substances Act.” N.M. Stat. Ann. § 30-31-25.1(B). The exemption that applies to paraphernalia possession does not extend to its distribution.

¹³⁴ New Mexico law provides exemptions to the paraphernalia law for syringe services program staff, volunteers, and participants: “The provisions of this subsection do not apply to a person who is in possession of: (1) hypodermic syringes or needles for the purpose of participation in or administration of the Harm Reduction Act; (2) supplies or devices obtained pursuant to the Harm Reduction Act in accordance with rules established by the department of health for the harm reduction program; or (3) supplies or devices used for the testing of controlled substances or controlled substance analogs for dangerous adulterants.” N.M. Stat. Ann. § 30-31-25.1(A). As of May 18, 2022, New Mexico law requires that a harm reduction program provide participants “supplies or devices used for testing controlled substances or controlled substance analogs for potentially dangerous adulterants.” N.M. Stat. Ann. § 24-2C-5(C).

¹³⁵ “A person who, in good faith, seeks medical assistance for someone experiencing an alcohol- or drug-related overdose shall not be arrested, charged, prosecuted or otherwise penalized, nor shall the property of the person be subject to civil forfeiture, for violating [subsection A of section 30-31-25.1 NMSA 1978, including charges related to the use or possession with intent to use drug paraphernalia] if the evidence for the alleged violation was obtained as a result of the need for seeking medical assistance.” N.M. Stat. Ann. § 30-31-27.1(A)(1). “A person who experiences an alcohol- or drug-related overdose and is in need of medical assistance shall not be arrested, charged, prosecuted or otherwise penalized, nor shall the property of the person be subject to civil forfeiture, for violating [subsection A of section 30-31-25.1 NMSA 1978, including charges related to the use or possession with intent to use drug paraphernalia] if the evidence for the alleged violation was obtained as a result of the overdose and the need for seeking medical assistance.” N.M. Stat. Ann. § 30-31-27.1(B)(1). “The act of seeking medical assistance for someone who is experiencing an alcohol- or drug-related overdose may be used as a mitigating factor in a criminal prosecution pursuant to the Controlled Substances Act for which immunity is not provided pursuant to this section [including for charges related to the delivery of drug paraphernalia].” N.M. Stat. Ann. § 30-31-27.1(C); see N.M. Stat. Ann. § 30-31-27.1(D) (defining “seeking medical assistance”).

¹³⁶ New York does not criminalize the use or possession with intent to use drug checking equipment. *But see* N.Y. Penal Law § 220.50 (Criminal provisions for using certain drug paraphernalia, not including drug checking equipment); N.Y. Penal Law § 220.45 (Criminal provisions for possessing a hypodermic instrument).

¹³⁷ New York does not criminalize the free distribution of drug paraphernalia. *See generally* N.Y. Penal Law § 220.50. However, it is unlawful in New York to possess with intent to sell, offer for sale, or purchase drug-related paraphernalia. N.Y. Gen. Bus. Law § 851.

¹³⁸ New York does not criminalize the use, possession with intent to use, or free distribution of drug checking equipment. However, the Good Samaritan law exempts charges relating to the sale of drug paraphernalia. N.Y. Penal Law § 220.78(1).

¹³⁹ Drug paraphernalia means “all equipment, products and materials of any kind that are used to facilitate, or intended or designed to facilitate, violations of the Controlled Substances Act, including...testing, analyzing...or otherwise introducing controlled substances into the human body. N.C. Gen. Stat. § 90-113.21(a). North Carolina criminalizes the use or possession with intent to use “drug paraphernalia to...test, analyze...a controlled substance other than marijuana.” N.C. Gen. Stat. § 90-113.22(a). However, the law exempts drug checking equipment for personal use from these provisions: “Notwithstanding the provisions of subsection (a) of this section [concerning the use of and possession with intent to use drug paraphernalia], it is not unlawful for a person who introduces a controlled substance into his or her body, or intends to introduce a controlled substance into his or her body, to knowingly use, or to possess with intent to use, testing equipment for identifying or analyzing the strength, effectiveness, or purity of that controlled substance....” N.C. Gen. Stat. § 90-113.22(d)(i). This statutory scheme leaves open the possibility that someone possessing drug checking equipment for reasons other than personal use (i.e., educational use, or to give to another person) could be charged with possession.

¹⁴⁰ “It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia knowing that it will be used to... test, analyze... a controlled substance which it would be unlawful to possess.” N.C. Gen. Stat. § 90-113.23(a). “Delivery, possession with intent to deliver, or manufacture with intent to deliver, of each separate and distinct item of drug paraphernalia is a separate offense.” N.C. Gen. Stat. § 90-113.23(b).

¹⁴¹ North Carolina exempts harm reduction organizations from provisions related to possessing and distributing drug checking equipment: “Notwithstanding the provisions of subsection (a) of this section [concerning the use or possession

with intent to use drug paraphernalia], it is not unlawful for... a governmental or nongovernmental organization that promotes scientifically proven ways of mitigating health risks associated with drug use and other high-risk behaviors to possess such testing equipment or distribute such testing equipment to a person who intends to introduce a controlled substance into his or her body.” N.C. Gen. Stat § 90-113.22(d)(ii). North Carolina further exempts participants, employees, and volunteers of a syringe exchange from possession charges, likely including possession of drug checking equipment: “Notwithstanding any...law, no employee, volunteer, or participant of a program established pursuant to this section [a needle and hypodermic syringe exchange program] shall be charged with or prosecuted for possession of ... [n]eedles, hypodermic syringes, or *other injection supplies* obtained from or returned to a program established pursuant to this section.” N.C. Gen. Stat § 90-113.27(a), (c)(1) (emphasis added). Further, North Carolina’s Department of Health and Human Services website notes that “most syringe exchange programs operate according to the practices and philosophy of harm reduction” and describes harm reduction techniques as including “drug-checking with fentanyl test strips.” *Syringe and Naloxone Access*, N.C. DEP’T OF HEALTH AND HUM. SERVS., <https://www.ncdhhs.gov/about/departments/initiatives/opioid-epidemic/syringe-and-naloxone-access> (last visited Sept. 21, 2022).

¹⁴² A person acting in good faith who seeks medical assistance in the good faith belief that they are the first to seek assistance for an individual experiencing a drug-related overdose shall not be prosecuted for a violation of G.S. 90-113.22 [including use or possession with intent to use drug paraphernalia] if the person provides their name and does not seek assistance during the execution of a warrant or lawful search, and evidence for prosecution under those sections was obtained as a result of the person seeking medical assistance for the drug-related overdose. N.C. Gen. Stat § 90-96.2(b). The same protections apply to the person who experienced the overdose. N.C. Gen. Stat § 90-96.2(c).

¹⁴³ “A person may not use or possess with intent to use drug paraphernalia to...test, analyze...a controlled substance.” N.D. Cent. Code § 19-03.4-03(1). Drug paraphernalia includes “[t]esting equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness, or purity of controlled substances.” N.D. Cent. Code § 19-03.4-01(1).

¹⁴⁴ “A person may not deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, if that person knows or should reasonably know that the drug paraphernalia will be used to...test, analyze...a controlled substance.” N.D. Cent. Code § 19-03.4-04. There are increased penalties for delivering drug paraphernalia, including drug checking equipment, to a minor. N.D. Cent. Code § 19-03.4-05.

¹⁴⁵ North Dakota law requires syringe services programs to provide supplies as part of their operations and specifically includes “testing strips” under the definition of “supplies.” See N.D. Cent. Code § 23-01-44. “Syringes, needles, and supplies appropriately collected under this section are not considered drug paraphernalia....” N.D. Cent. Code § 23-01-44(7). However, the plain language of the statute appears to provide protection only to testing strips “collected” by an SSP. Since testing strips are generally distributed by an SSP, not collected by one, it is not clear what protection, if any, this section provides.

¹⁴⁶ “An individual is immune from criminal prosecution under...section 19-03.4-03 [use or possession with intent to use drug paraphernalia] if in good faith that individual seeks medical assistance for another individual in need of emergency medical assistance due to a drug overdose. To receive immunity under this section, the individual receiving immunity must have remained on the scene until assistance arrived, cooperated with the medical treatment of the reported drug overdosed individual, and the overdosed individual must have been in a condition a layperson would reasonably believe to be a drug overdose requiring immediate medical assistance. Neither the individual who experiences a drug-related overdose and is in need of emergency medical assistance nor the cooperating individual seeking medical assistance may be charged or prosecuted for the criminal offenses listed in this section or for the sharing of controlled substances among those present. Immunity from prosecution under this section does not apply unless the evidence for the charge or prosecution was obtained as a result of the drug-related overdose and the need for emergency medical assistance.” N.D. Cent. Code § 19-03.1-23.4.

¹⁴⁷ “As used in this section, ‘drug paraphernalia’ means any equipment, product, or material of any kind that is used by the offender, intended by the offender for use, or designed for use, in...testing, analyzing...or otherwise introducing into the human body, a controlled substance in violation of this chapter.” Ohio Rev. Code Ann. § 2925.14(A). “[N]o person shall knowingly use, or possess with purpose to use, drug paraphernalia.” Ohio Rev. Code Ann. § 2925.14(C)(1).

¹⁴⁸ Ohio does not criminalize the free distribution of drug paraphernalia. However, it is unlawful in Ohio to “sell, or possess or manufacture with purpose to sell” drug paraphernalia. Ohio Rev. Code Ann. § 2925.14(C)(2).

¹⁴⁹ Ohio law exempts participants of bloodborne infectious disease prevention programs (what the state terms SSPs) from paraphernalia possession under strict circumstances: “If participating in a component of a bloodborne infectious disease prevention program would be considered a violation of [Division (C)(1) of section 2925.14 of the Revised Code

- regarding the prohibition against illegal possession of drug paraphernalia], a program participant who is within one thousand feet of a program facility and is in possession of documentation from the program identifying the individual as an active participant in the program is not subject to criminal prosecution for the violation.” Ohio Rev. Code Ann. § 3707.57(F)(2)(c). Ohio also exempts volunteers and staff of a program: “If carrying out a duty under a component of a bloodborne infectious disease prevention program [authorized by Ohio Rev. Code Ann. § 3707.57] would be considered a violation of [Division (C)(1) of section 2925.14 of the Revised Code regarding the prohibition against illegal possession of drug paraphernalia], an employee or volunteer of the program, when carrying out the duty, is not subject to criminal prosecution for the violation.” Ohio Rev. Code Ann. § 3707.57(F)(1)(c).
- ¹⁵⁰ Ohio law provides protection from the crime of possessing controlled substances in certain circumstances, but a similar provision does not exist within the statute criminalizing the use, possession with intent to use, or delivery of drug paraphernalia. See Ohio Rev. Code Ann. §§ 2925.11(B)(2), 2925.14.
- ¹⁵¹ “No person shall use drug paraphernalia to...test, analyze...a controlled dangerous substance in violation of the Uniform Controlled Dangerous Substances Act.” Okla. Stat. tit. 63 § 2-405(B). Drug paraphernalia includes “testing equipment used, intended for use, or fashioned specifically for use in identifying, or in analyzing the strength, effectiveness or purity of controlled dangerous substances.” Okla. Stat. tit. 63 § 2-101(36)(d).
- ¹⁵² “No person shall deliver, sell, possess or manufacture drug paraphernalia knowing, or under circumstances where one reasonably should know, that it will be used to...test, analyze...a controlled dangerous substance in violation of the Uniform Controlled Dangerous Substances Act.” Okla. Stat. tit. 63 § 2-405(C).
- ¹⁵³ Effective April 20, 2021, harm reduction organizations that have registered with the State Department of Health are authorized to “[p]ossess and distribute hypodermic needles, cleaning kits, test kits and opioid antagonists.” Okla. Stat. tit. 63 § 2-1101(B)(6). The paraphernalia law was also modified to note that “nothing in this section shall apply to objects in the possession of harm-reduction services providers as authorized by [the syringe services program law].” Okla. Stat. tit. 63 § 2-101.1.
- ¹⁵⁴ “A person who meets the criteria of subsection A of this section [listing the factors to meet the Good Samaritan law] is immune from criminal prosecution for...possession of drug paraphernalia associated with a controlled dangerous substance, as defined in paragraph 36 of Section 2-101 of Title 63 of the Oklahoma Statutes.” Okla. Stat. tit. 63 § 2-413.1(B); see also Okla. Stat. tit. 63 § 2-413.1(A) (listing the factors to qualify for the Good Samaritan exception).
- ¹⁵⁵ Oregon does not criminalize the use or possession with intent to use drug paraphernalia. See *generally* Or. Rev. Stat. §§ 475.525-.744.
- ¹⁵⁶ “It is unlawful for any person to sell or deliver, possess with intent to sell or deliver or manufacture with intent to sell or deliver drug paraphernalia, knowing that it will be used to unlawfully...test, analyze...a controlled substance.” Or. Rev. Stat. § 475.525(1). Drug paraphernalia includes “[t]esting equipment marketed for use or designed for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances.” Or. Rev. Stat. § 475.525(2). Violations are punishable by a civil penalty of between \$2,000 and \$10,000. Or. Rev. Stat. § 475.565.
- ¹⁵⁷ “Sterile needles and syringes and *other items provided by a syringe service program* may not be considered ‘drug paraphernalia,’ as that term is defined in ORS 475.525 [related to the delivery of drug paraphernalia].” Or. Rev. Stat. § 475.757 (3) (emphasis added).
- ¹⁵⁸ “The immunity conferred under subsections (1) and (2) of this section [listing the factors to qualify for the Good Samaritan exception] applies to arrest and prosecution for...[u]nlawful possession of drug paraphernalia with intent to sell or deliver as described in ORS 475.525.” Or. Rev. Stat. § 475.898(3)(k); see also Or. Rev. Stat. §§ 475.898(1),(2) (listing the factors to qualify for the Good Samaritan exception).
- ¹⁵⁹ “The following acts and the causing thereof within the Commonwealth are hereby prohibited: ... [t]he use of, or possession with intent to use, drug paraphernalia for the purpose of...testing, analyzing...a controlled substance in violation of this act.” 35 Pa. Stat. § 780-113(a)(32). Drug paraphernalia includes “[t]esting equipment used, intended for use or designed for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances.” 35 Pa. Stat. § 780-102(b)(4). Note, however, that fentanyl test strips have been decriminalized by Executive Order in Philadelphia. Mayor Signs Executive Order to Decriminalize Fentanyl Test Strips, City of Philadelphia, Office of the Mayor (Aug. 2, 2021), <https://www.phila.gov/2021-08-02-mayor-signs-executive-order-to-decriminalize-fentanyl-test-strips/> (last visited Sept. 29, 2022). Likewise, the Mayor of Pittsburgh issued an Executive Order directing that individuals not be arrested for possessing or distributing fentanyl test strips for harm reduction purposes. Mayor William Peduto, *Executive Order on Fentanyl Test Strips for Overdose Awareness Day*, CITY OF PITTSBURGH (Aug. 31, 2021), https://apps.pittsburghpa.gov/redtail/images/15559_EO_Final_Fentanyl.pdf. Under 35 Pa. Stat. Ann. § 780-141.1, localities are allowed to enact “consistent” local ordinances addressing drug paraphernalia.

-
- ¹⁶⁰ “The delivery of, possession with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it would be used to...test, analyze...a controlled substance in violation of this act.” 35 Pa. Stat. § 780-113(a)(33).
- ¹⁶¹ While syringe services programs operate in Allegheny and Philadelphia counties under local authorization, neither provides explicit legal protection from paraphernalia laws. See Allegheny County Code § 851-1 et seq; Phila. Exec. Order No. 04-92 (July 27, 1992).
- ¹⁶² “The prohibition on charging or prosecuting a person as described in subsection (a) [listing the factors to qualify for the Good Samaritan exception] bars charging or prosecuting a person for probation and parole violations and for violations of section 13(a)(5), (16), (19), (31), (32) [use and possession with intent to use drug paraphernalia], (33) [delivery of drug paraphernalia] and (37).” 35 Pa. Stat. § 780-113.7(b); see *also* 35 Pa. Stat. § 780-113.7(a), (c) (listing the factors to qualify for the Good Samaritan exception).
- ¹⁶³ “It shall be unlawful for any person to knowingly and with criminal intent, use or possess with the intention of using drug paraphernalia to ...test, analyze...a controlled substance in violation of this chapter.” P.R. Laws Ann. tit. 24, § 2411b(c)(2). Drug paraphernalia includes “[t]esting equipment, or chemicals or alcohol used, or destined or designed for use in the identification, analysis or measurement of the potency, effectiveness, purity or quality of controlled substances.” P.R. Laws Ann. tit. 24, § 2411b(a)(4).
- ¹⁶⁴ “It shall be unlawful for any person to knowingly, and with criminal intent, manufacture, distribute, sell, dispense, deliver, transport, conceal, or possess with the intent of distributing, selling, disposing, delivering, transporting or concealing drug paraphernalia, as this term is defined in subsection (a) of this section, in order to...test, analyze...a controlled substance into the human body in violation of this chapter.” P.R. Laws Ann. tit. 24, § 2411b(c)(1). There are increased penalties for a person over 18 delivering paraphernalia to a person under 18. P.R. Laws Ann. tit. 24, § 2405(c).
- ¹⁶⁵ “The provisions of § 2411b and 2405 of this title shall not apply to: (1) The Department of Health. (2) Non-profit entities duly authorized by the Department of Health that, with the purpose of preventing the transmission of contagious diseases, or as part of an educational or prevention program, distribute hypodermic needles and other accessories. (3) Duly identified participants of said programs for distribution and exchange of hypodermic needles and other accessories.” P.R. Laws Ann. Tit. 24, § 2608.
- ¹⁶⁶ Puerto Rico enacted a Good Samaritan law in August 2021 that provides protection from some drug paraphernalia charges, but not charges related to testing equipment. See P.R. Laws Ann. tit. 24, § 2644(a)(1).
- ¹⁶⁷ Rhode Island does not criminalize the use or possession with intent to use drug paraphernalia. See *generally* R.I. Gen. Laws §§ 21-28.5-1–4.
- ¹⁶⁸ Rhode Island has explicitly legalized the provision and utilization of drug checking equipment: “(a) Any person may provide, administer, or utilize a narcotic testing product to assist another person in determining whether a narcotic or substance contains chemicals, toxic substances, or hazardous compounds. Narcotic testing products shall include, but not be limited to, fentanyl test strips. (b) A person who provides, administers, or utilizes a narcotic testing product to assist another person shall not be subject to civil liability or criminal prosecution as a result of providing, administering, or utilizing the narcotic testing product to assist another person. R.I. Gen. Laws § 21-28.9-3.1.
- ¹⁶⁹ While syringe services programs are authorized in Rhode Island, the law does not provide explicit protection from paraphernalia-related crimes. See R.I. Gen. Laws § 23-11-19. However, any “person who provides, administers, or utilizes a narcotic testing product to assist another person shall not be subject to civil liability or criminal prosecution as a result of providing, administering, or utilizing the narcotic testing product to assist another person. R.I. Gen. Laws § 21-28.9-3.1(b).
- ¹⁷⁰ The Rhode Island Good Samaritan law exempts possession of drug paraphernalia, even though this is not a crime in the state. See R.I. Gen. Laws § 21-28.9-4. The Good Samaritan law is confusingly written, although we believe it was intended to apply to the delivery of drug paraphernalia under the general rule that legislatures are presumed not to create laws that would have no effect: “Any person who, in good faith, without malice and in the absence of evidence of an intent to defraud, seeks medical assistance for someone experiencing a drug overdose or other drug-related medical emergency shall not be charged or prosecuted for any crime related to the possession of a controlled substance or drug paraphernalia, or the operation of a drug-involved premises, if the evidence for the charge was gained as a result of the seeking of medical assistance.” R.I. Gen. Laws § 21-28.9-4(a); see *also* R.I. Gen. Laws § 21-28.9-4(b) (containing the Good Samaritan exception as applied to a person experiencing an overdose).
- ¹⁷¹ South Carolina’s definition of paraphernalia does not explicitly include drug checking equipment, nor does it encompass items used for injecting controlled substances: “‘Paraphernalia’ means any instrument, device, article, or contrivance used, designed for use, or intended for use in ingesting, smoking, administering, manufacturing, or preparing a controlled substance and does not include cigarette papers and tobacco pipes but includes, but is not limited to [lists

examples not including drug checking equipment].” S.C. Code § 44-53-110(33). “Administering” is defined in the Code as “the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by: (a) a practitioner (or, in his presence, by his authorized agent); or (b) the patient or research subject at the direction and in the presence of the practitioner.” S.C. Code of Laws § 44-53-110(1). “Practitioner” is defined as “a physician, dentist, veterinarian, podiatrist, scientific investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this State.” S.C. Code of Laws § 44-53-110(36). SSPs and other similar entities are not “practitioners” under South Carolina law. We therefore conclude that it is not contrary to South Carolina law for a person who uses drugs to possess drug checking equipment. In South Carolina the possession of paraphernalia is a civil offense: “It shall be unlawful for any person to advertise for sale, manufacture, possess, sell or deliver, or to possess with the intent to deliver, or sell paraphernalia.” S.C. Code § 44-53-391(a). “Any person found guilty of violating the provisions of this section shall be subject to a civil fine of not more than five hundred dollars except that a corporation shall be subject to a civil fine of not more than fifty thousand dollars. Imposition of such fine shall not give rise to any disability or legal disadvantage based on conviction for a criminal offense.” S.C. Code § 44-53-391(c).

¹⁷² South Carolina prohibits the delivery of paraphernalia: “It shall be unlawful for any person to advertise for sale, manufacture, possess, sell or deliver, or to possess with the intent to deliver, or sell paraphernalia.” S.C. Code § 44-53-391(a). However, South Carolina’s definition of paraphernalia does not explicitly include drug checking equipment. ‘Paraphernalia’ means any instrument, device, article, or contrivance used, designed for use, or intended for use in ingesting, smoking, administering, manufacturing, or preparing a controlled substance and does not include cigarette papers and tobacco pipes but includes, but is not limited to [lists examples not including drug checking equipment].” S.C. Code § 44-53-110(33).

¹⁷³ Syringe services programs are not explicitly permitted in South Carolina.

¹⁷⁴ “A person who seeks medical assistance for another person in accordance with the requirements of subsection (A) may not be prosecuted for... (5) possessing paraphernalia in violation of Section 44-53-391; (6) selling or delivering paraphernalia in violation of Section 44-53-391, when the sale or delivery is to the person who appears to be experiencing a drug-related overdose.” S.C. Code § 44-53-1920(B)(5), (6); *see also* S.C. Code § 44-53-1920(A), (C), (D) (listing the factors to qualify for the Good Samaritan exception).

¹⁷⁵ “No person, knowing the drug related nature of the object, may use or to possess with intent to use, drug paraphernalia to... test, analyze... any controlled substance.” S.D. Codified Laws § 22-42A-3. Drug paraphernalia includes “any equipment, products and materials of any kind which are primarily used, intended for use, or designed for use by the person in possession of them, in... testing, analyzing... or otherwise introducing into the human body any controlled substance or marijuana in violation of the provisions of this chapter.” S.D. Codified Laws § 22-42A-1.

¹⁷⁶ “No person, knowing the drug related nature of the object, may deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to... test, analyze... a controlled substance... in violation of this chapter.” S.D. Codified Laws § 22-42A-4.

¹⁷⁷ South Dakota’s Good Samaritan exception does not provide protection for drug paraphernalia crimes. *See* S.D. Codified Laws §§ 34-20A-110, 34-20A-111. However, the Good Samaritan law might apply as a mitigating factor for charges relating to the use, possession with intent to use, or delivery of drug paraphernalia: “providing first aid or other medical assistance to someone who is experiencing a drug-related overdose may be used as a mitigating factor in a criminal prosecution for which immunity is not provided under §§ 34-20A-109 to 34-20A-113, inclusive.” S.D. Codified Laws § 34-20A-112; *see also* S.D. Codified Laws §§ 34-20A-109, 34-20A-113 (listing factors to qualify for the Good Samaritan law, definitions, and other relevant information).

¹⁷⁸ “Except when used or possessed with the intent to use by a person authorized... to dispense, prescribe, manufacture or possess a controlled substance, it is unlawful for any person to use, or to possess with intent to use, drug paraphernalia to... test, analyze... a controlled substance or controlled substance analogue in violation of this part.” Tenn. Code Ann. § 39-17-425(a)(1). Drug paraphernalia includes “[t]esting equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness or purity of controlled substances,” but (from March 31, 2022 to July 1, 2025) does not include “narcotic testing equipment used to determine whether a controlled substance contains a synthetic opioid, unless the narcotic testing equipment is possessed for purposes of the defendant’s commission of an offense under § 39-17-417.” Tenn. Code Ann. § 39-17-402(12)(B) (modified by 2022 Tennessee Laws Pub. Ch. 764 (S.B. 2427)).

¹⁷⁹ “Except when delivered, possessed with the intent to deliver, or manufactured with the intent to deliver by a person authorized... to dispense, prescribe, manufacture or possess a controlled substance, it is unlawful for any person to

deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to...test, analyze...a controlled substance or controlled substance analogue in violation of this part.” Tenn. Code Ann. § 39-17-425(b)(1). Drug paraphernalia includes “[t]esting equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness or purity of controlled substances,” but (from March 31, 2022 to July 1, 2025) does not include “narcotic testing equipment used to determine whether a controlled substance contains a synthetic opioid, unless the narcotic testing equipment is possessed for purposes of the defendant’s commission of an offense under § 39-17-417.” Tenn. Code Ann. § 39-17-402(12)(B) (modified by 2022 Tennessee Laws Pub. Ch. 764 (S.B. 2427)).

¹⁸⁰ Tennessee exempts participants, volunteers, and employees from the state paraphernalia law for paraphernalia obtained from or returned to a syringe exchange: “It is an exception to the application of title 39, chapter 17, part 4 [related to possessing or giving away drug paraphernalia, including drug checking equipment], if an employee, volunteer, or participant of a program established pursuant to this section [needle and hypodermic syringe exchange program] possesses...[n]eedles, hypodermic syringes, or *other injection supplies obtained from or returned to a program established pursuant to this section.*” Tenn. Code Ann. § 68-1-136(c)(1)(A) (emphasis added). “The exception provided in this subsection (c) shall apply only if the person claiming the exception provides written verification that a needle, syringe, or other injection supplies were obtained from a needle and hypodermic syringe exchange program established pursuant to this section. For a participant in the program, this exception shall only apply to possession when the participant is engaged in the exchange or in transit to or from the exchange.” Tenn. Code Ann. § 68-1-136(c)(2)(A). The statute authorizing the creation of a syringe exchange explains that syringe exchanges should include supplies in addition to syringes, likely including drug checking equipment: “Programs established pursuant to this section shall offer all of the following: ... [n]eedles, hypodermic syringes, and *other injection supplies.*” Tenn. Code Ann. § 68-1-136(b)(2) (emphasis added).

¹⁸¹ “Any person who in good faith seeks medical assistance for a person experiencing or believed to be experiencing a drug overdose shall not be arrested, charged, or prosecuted for a drug violation if the evidence for the arrest, charge, or prosecution of the drug violation resulted from seeking such medical assistance. Any person who is experiencing a drug overdose and who in good faith seeks medical assistance for or is the subject of a request for medical assistance shall not be arrested, charged, or prosecuted for a drug violation if the evidence for the arrest, charge, or prosecution of the drug violation resulted from seeking such medical assistance. This immunity from being arrested, charged, or prosecuted shall apply to the person experiencing a drug overdose only on the person’s first such drug overdose.” Tenn. Code Ann. § 63-1-156(b). As defined by the same provision, a “drug violation” includes a violation of § 39-17-425 [including the use, possession with intent to use, and delivery of drug paraphernalia].” Tenn. Code Ann. § 63-1-156(a)(3)(B); see also Tenn. Code Ann. § 63-1-156(a) (listing additional relevant definitions).

¹⁸² “A person commits an offense if the person knowingly or intentionally uses or possesses with intent to use drug paraphernalia to...test, analyze...a controlled substance in violation of this chapter or to inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this chapter.” Tex. Health & Safety Code Ann. § 481.125(a). Drug paraphernalia includes “testing equipment used or intended for use in identifying or in analyzing the strength, effectiveness, or purity of a controlled substance.” Tex. Health & Safety Code Ann. § 481.002(17)(D).

¹⁸³ “A person commits an offense if the person knowingly or intentionally delivers, possesses with intent to deliver, or manufactures with intent to deliver drug paraphernalia knowing that the person who receives or who is intended to receive the drug paraphernalia intends that it be used to... test, analyze... a controlled substance in violation of this chapter.” Tex. Health & Safety Code Ann. § 481.125(b).

¹⁸⁴ Effective September 1, 2021, Texas law provides a “defense to prosecution” for paraphernalia possession if certain criteria are met. Tex. Health & Safety Code Ann. § 481.125(g)–(i) (modified by 2021 Tex. Sess. Law Serv. Ch. 808 (H.B. 1694)).

¹⁸⁵ “It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia to...test, analyze...a controlled substance...in violation of this chapter.” Utah Code Ann. § 58-37a-5(1)(a). Drug paraphernalia includes “testing equipment used, or intended for use, to identify or to analyze the strength, effectiveness, or purity of a controlled substance.” Utah Code Ann. § 58-37a-3(4).

¹⁸⁶ “It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver, any drug paraphernalia, knowing that the drug paraphernalia will be used to...test, analyze...a controlled substance...in violation of this act.” Utah Code Ann. § 58-37a-5(2)(a). However, the Utah Department of Health purchases and distributes fentanyl test strips in the Utah Syringe Exchange Program. See UTAH DEP’T. OF HEALTH, FENTANYL TEST STRIP PILOT PROJECT, <https://ptc.health.utah.gov/wp-content/uploads/2020/12/FTS-Report-Q1-2020-Final.pdf>.

¹⁸⁷ While SSPs are authorized in Utah, no immunity is explicitly provided. See Utah Code Ann. § 26-7-8.

- ¹⁸⁸ “It is an affirmative defense to an allegation of the commission of an offense listed in Subsection (16)(b) that the person or bystander [lists the factors to qualify for the Good Samaritan exemption].” Utah Code Ann. § 58-37-8(16)(a). Subsection (16)(b) includes “any violation of Chapter 37a, Utah Drug Paraphernalia Act [including the use, possession with intent to use, and delivery of drug paraphernalia].” Utah Code Ann. § 58-37-8(16)(b)(iii); *see also* Utah Code Ann. § 58-37-8(16)(a); (c) (listing the factors to qualify for the Good Samaritan law exemption and the definition of “good faith”).
- ¹⁸⁹ Vermont does not criminalize the use or possession with intent to use drug paraphernalia. *See generally* Vt. Stat. Ann. tit. 18, §§ 4475-78.
- ¹⁹⁰ The free distribution of drug paraphernalia is not criminalized in Vermont. *See generally* Vt. Stat. Ann. tit. 18, §§ 4475-78. However, it is illegal in Vermont to sell drug paraphernalia to a minor. Vt. Stat. Ann. tit. 18, § 4476(a).
- ¹⁹¹ SSPs are authorized by state law, but no explicit immunity is provided. *See* Vt. Stat. Ann. tit. 18, § 4478.
- ¹⁹² The use, possession with intent to use, and free distribution of drug paraphernalia is not criminalized in Vermont. *See generally* Vt. Stat. Ann. tit. 18, §§ 4475-78. The Good Samaritan law may provide a mitigating factor for selling drug paraphernalia, including drug checking equipment, to a minor. *See* Vt. Stat. Ann. tit. 18, § 4254(f).
- ¹⁹³ “[I]t is unlawful for any person to possess controlled paraphernalia.” Va. Code Ann. § 54.1-3466(B). The definition of “controlled paraphernalia” is generally limited to instruments “adapted for the administration of controlled dangerous substances by hypodermic injections” and containers “suitable for the packaging of individual quantities of controlled drugs.” Va. Code Ann. § 54.1-3466(A). Further, Virginia law was modified effective July 1, 2019, such that “[c]ontrolled paraphernalia” does not include narcotic testing products used to determine whether a controlled substance contains fentanyl or a fentanyl analog.” Va. Code Ann. § 54.1-3466(A).
- ¹⁹⁴ “Except as authorized in this chapter, it is unlawful for any person to distribute controlled paraphernalia.” Va. Code Ann. § 54.1-3466(C). However, as of July 1, 2019, “[c]ontrolled paraphernalia” does not include narcotic testing products used to determine whether a controlled substance contains fentanyl or a fentanyl analog.” Va. Code Ann. § 54.1-3466(A). Similarly, the definition of “drug paraphernalia” includes “[t]esting equipment intended for use or designed for use in identifying or in analyzing the strength or effectiveness of marijuana or controlled substances, other than narcotic testing products used to determine whether a controlled substance contains fentanyl or a fentanyl analog.” Va. Code Ann. § 18.2-265.1(4). It is illegal to sell or possess with intent to sell such drug paraphernalia (but not to give it away). Va. Code Ann. § 18.2-265.3.
- ¹⁹⁵ “The provisions of [sections related to possessing or giving away drug paraphernalia and controlled paraphernalia] and of § 18.2-265.3 [related to delivery of drug paraphernalia to a minor] shall not apply to (i) a person who possesses or distributes controlled paraphernalia on behalf of or for the benefit of a comprehensive harm reduction program established pursuant to § 32.1-45.4 or (ii) a person who possesses controlled paraphernalia obtained from a comprehensive harm reduction program established pursuant to § 32.1-45.4.” Va. Code Ann. § 54.1-3466(G). These exemptions are restated in the statute authorizing comprehensive harm reduction programs. Va. Code Ann. § 32.1-45.4(E)-(G). The statute authorizing comprehensive harm reduction programs explains that these programs should include supplies in addition to syringes, likely including drug checking equipment: “[a] comprehensive harm reduction program established pursuant to this section shall include...the provision of hypodermic needles and syringes and *other injection supplies...overdose prevention...access to overdose prevention kits.*” Va. Code Ann. § 32.1-45.4(B)(ii), (iv)(b), (v) (emphasis added).
- ¹⁹⁶ “No individual shall be subject to arrest or prosecution for...possession of controlled paraphernalia pursuant to § 54.1-3466 if [lists factors to qualify for the Good Samaritan exemption].” Va. Code Ann. § 18.2-251.03(B); *see also* Va. Code Ann. § 18.2-251.03(A), (B)(1)-(4) (listing a definition for “overdose” and factors to qualify for the Good Samaritan exemption).
- ¹⁹⁷ D.C. generally criminalizes the use or possession with intent to use drug paraphernalia, including drug checking equipment. *See* D.C. Code Ann. §§ 48-1101(3)(D), 48-1103(a)(1). However, D.C. exempts the use, and possession with the intent to use, drug paraphernalia for the personal use of a controlled substance. D.C. Code Ann. § 48-1103(a)(1)(1A). When originally enacted effective April 11, 2019, this carveout was specific to testing equipment. However, it was extended to all paraphernalia as of March 16, 2021. This statutory scheme leaves open the possibility that someone possessing drug checking equipment for reasons other than personal use (i.e., educational use, or to give to another person for use) could be convicted of paraphernalia possession.
- ¹⁹⁸ “[I] is unlawful for any person to deliver or sell, possess with intent to deliver or sell, or manufacture with intent to deliver or sell drug paraphernalia, knowingly, or under circumstances where one reasonably should know, that it will be used to...test, analyze...a controlled substance.” D.C. Code Ann. § 48-1103(b)(1).
- ¹⁹⁹ “Notwithstanding paragraph (1) of this subsection [related to giving away drug paraphernalia], it shall not be unlawful for a community-based organization, as that term is defined in § 7-404(a)(1) to deliver or sell, or possess with intent to deliver or sell, the materials described in § 48-1101(3)(D) [including drug checking equipment].” D.C. Code Ann. § 7-

-
- 404(b)(1)(1A). Community-based organization is defined as “an organization that provides services, including medical care, counseling, homeless services, or drug treatment, to individuals and communities impacted by drug use. The term ‘community-based organization’ includes all organizations currently participating in the Needle Exchange Program with the Department of Human Services under § 48-1103.01.” D.C. Code Ann. § 7-404(a)(1).
- ²⁰⁰ The District’s overdose Good Samaritan law provides that use or possession with intent to use drug paraphernalia “shall not be considered” a crime if the requirements of the law are met. D.C. Code § 7-403(a).
- ²⁰¹ Effective May 13, 2021, Washington law was modified to remove “test, analyze” and “otherwise introduce into the human body” from the list of prohibited activities. Wash. Rev. Code § 69.50.412(1). It seems clear that this change was made to remove criminal sanctions associated with the use and distribution of drug checking equipment (among other previously prohibited objects).
- ²⁰² Effective May 13, 2021, the law was modified to remove “test” and “otherwise introduce into the human body” from the list of prohibited activities related to paraphernalia. Wash. Rev. Code § 69.50.412(2). However, it remains a civil infraction to sell or give drug paraphernalia, including “all equipment products, and materials...used, intended for use, or designed for use in...testing, analyzing...a controlled substance other than marijuana.” Wash. Rev. Code § 69.50.412(1).
- ²⁰³ Public health and community-based HIV prevention programs and pharmacies would be exempt from the civil infraction related to giving away drug paraphernalia if a court interpreted drug checking equipment as “injection syringe equipment”: “Nothing in subsection (1) of this section [the civil infraction related to giving away drug paraphernalia] prohibits legal distribution of injection syringe equipment through public health and community based HIV prevention programs, and pharmacies.” Wash. Rev. Code § 69.50.412(3). Syringes dispensed from SSPs were found exempt from state paraphernalia laws in a 1992 case, and, while there are no specific rulings on the question, it is likely that the holding there would apply to drug checking equipment as well. See *Spokane County Health District v. Brockett*, 120 Wash. 2d 140, 839 P.2d 324 (1992). Notably, in 2019, the Washington legislature designated funding specifically for syringe exchanges to give away fentanyl test strips. Uncle Ike’s, *Fentanyl Test Strips Help Save Lives*, THE SEATTLE TIMES (Feb. 18, 2022, 9:14 AM), <https://www.seattletimes.com/sponsored/fentanyl-test-strips-help-save-lives/>.
- ²⁰⁴ Washington’s overdose Good Samaritan law does not provide protection from the law that makes it a civil infraction to sell or give away drug paraphernalia. See Wash. Rev. Code § 69.50.315.
- ²⁰⁵ West Virginia does not criminalize the use or possession with intent to use drug paraphernalia. See *generally* W. Va. Code §§ 47-19-1–8.
- ²⁰⁶ West Virginia does not criminalize the free distribution of drug paraphernalia. See *generally* W. Va. Code §§ 47-19-1–8. However, it is unlawful in West Virginia to sell drug paraphernalia, including drug checking equipment, to minors. W. Va. Code § 47-19-6 (2020). It is also unlawful to sell drug paraphernalia, including drug checking equipment, at certain events or outdoors. W. Va. Code § 47-19-8 (2020). As of June 10, 2022, fentanyl test strips are explicitly excluded from the definition of drug paraphernalia under West Virginia law. See W. Va. Code Ann. § 47-19-3(a)(4) (modified by 2022 West Virginia Laws Ch. 60 (H.B. 4373)); W. Va. Code Ann. § 60A-4-403a(h) (modified by 2022 West Virginia Laws Ch. 60 (H.B. 4373)).
- ²⁰⁷ West Virginia does not criminalize the use, possession with intent to use, or free distribution of drug paraphernalia. See *generally* W. Va. Code §§ 47-19-1–8. West Virginia’s Good Samaritan law does not include protections related to drug checking equipment. See W. Va. Code §§ 16-47-4, 16-47-5.
- ²⁰⁸ Wisconsin criminalizes the use or possession with primary intent to use drug paraphernalia: “No person may use, or possess with the primary intent to use, drug paraphernalia to...test, analyze...a controlled substance or controlled substance analog in violation of this chapter.” Wis. Stat. § 961.573(1). Wisconsin’s drug paraphernalia definition includes “[a]ll equipment...used for...testing, analyzing” with “testing equipment” listed explicitly. Wis. Stat. § 961.571(1)(a). However, as of March 18, 2022, “Any materials used or intended for use in testing for the presence of fentanyl or a fentanyl analog in a substance” are excluded from the definition of drug paraphernalia under Wisconsin law. See Wis. Stat. § 961.571(1)(b)(3). Also excluded from Wisconsin’s drug paraphernalia definition are “hypodermic syringes, needles and *other objects used or intended for use in parenterally injecting substances into the human body.*” Wis. Stat. § 961.571(1)(b)(1) (emphasis added).
- ²⁰⁹ Wisconsin explicitly criminalizes the act of giving away drug paraphernalia: “No person may deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing that it will be primarily used to...test, analyze...a controlled substance or controlled substance analog in violation of this chapter.” Wis. Stat. § 961.574(1). Wisconsin’s drug paraphernalia definition includes “[a]ll equipment... used for...testing, analyzing” with “testing equipment” listed explicitly. Wis. Stat. § 961.571(1)(a). However, as of March 18, 2022, “Any materials used or intended for use in testing for the presence of fentanyl or a fentanyl analog in a substance” are excluded from the definition of

drug paraphernalia under Wisconsin law. See Wis. Stat. § 961.571(1)(b)(3) (modified by 2021-2022 Wisc. Legis. Serv. Act 180 (2021 S.B. 600)).

²¹⁰ “An aider is immune from prosecution under s. 961.573 for the possession of drug paraphernalia.” Wis. Stat. § 961.443(2); see *also* Wis. Stat. § 961.443(1) (listing the definition for “aider” and factors to qualify under the Good Samaritan exemption).

²¹¹ Wyoming does not criminalize the use or possession with intent to use drug paraphernalia. See *generally* Wyo. Stat. Ann. §§ 35-7-1056–1057. Further, unlike in most states, the definition of “drug paraphernalia” under Wyoming law does not include “testing,” “analyzing,” or similar terms. Wyo. Stat. Ann. § 35-7-1002.

²¹² Wyoming explicitly criminalizes the act of giving away drug paraphernalia. There are increased penalties for delivering drug paraphernalia to a minor. Wyo. Stat. Ann. § 35-7-1057. While Wyoming’s definition of drug paraphernalia does not explicitly include drug checking equipment, it does include “all equipment, products and materials of any kind when used, advertised for use, intended for use or designed for use for manufacturing, converting, preparing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance in violation of this act.” Wyo. Stat. Ann. § 35-7-1002(a)(xxvii). There is no case law on the application of this definition to drug checking equipment.

²¹³ Wyoming has not enacted an overdose Good Samaritan law.